

BEFORE THE
COPYRIGHT ROYALTY TRIBUNAL
WASHINGTON, D.C.

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In the Matter of
:
1990 CABLE COPYRIGHT ROYALTY
:
DISTRIBUTION PROCEEDING :DOCKET # CRT 92-1-90CD
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(This volume contains pages 1 through 206)

Washington, D.C.

Wednesday, September 8, 1993

The above-entitled matter came on for hearing,
pursuant to notice, in the Offices of the Copyright
Royalty Tribunal, in Room 921, 1825 Connecticut
Avenue, N.W., Washington, D.C., at 10:00 a.m.

BEFORE:

CINDY DAUB	Chairperson
BRUCE D. GOODMAN	Commissioner
EDWARD J. DAMICH	Commissioner

LINDA R. BOCCHI	General Counsel
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P R O C E E D I N G S

(10:10 a.m.)

CHAIRPERSON DAUB: The Tribunal will come to order. Today, September 8, 1993, the Copyright Royalty Tribunal begins the presentation of the direct cases in the 1990 Phase I Cable Royalty Distribution Proceeding.

For the record, I would like for each counsel who is going to participate in this proceeding to give me their name, the name of the client, and the names of the other lawyers who will participate in this proceeding. Let's start with Mr. Lane.

MR. LANE: Madam Chairman, my name is Dennis Lane. I represent the Program Suppliers in this case. With me in this proceeding who will appear at various times are Brian Holland and Jane Saunders. We are all of the law firm of Morrison and Hecker, 1150 18th Street, Suite 800, Washington, D.C.

CHAIRPERSON DAUB: Mr. Garrett?

MR. GARRETT: Good morning, Madam Chairman. Robert Garrett, of the law firm of Arnold and Porter, here representing the Joint Sports Claimants, along with my colleagues, Mr. James

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1 Portnoy and Kitty Behan, who will also be
2 participating in these proceedings.

3 CHAIRPERSON DAUB: Thank you. Mr.
4 Stewart?

5 MR. STEWART: Good morning, Madam
6 Chairman. My name is John Stewart, of the firm of
7 Crowell and Moring. With me today is my colleague
8 Katherine White. We are appearing on behalf of the
9 National Association of Broadcasters, on behalf of
10 the U.S. Commercial Television Claimants' claim.

11 CHAIRPERSON DAUB: Mr. Hester?

12 MR. HESTER: Good morning. Timothy
13 Hester, with the law firm of Covington and Burling,
14 representing Public Broadcasting Service. With me
15 is my colleague Michele Woods, who will also be
16 participating.

17 CHAIRPERSON DAUB: Thank you. Mr.
18 Midlen?

19 MR. MIDLEN: Good morning, Madam
20 Chairman. John Midlen, Midlen and Guillot; Barry
21 Gottfried, of Fisher, Wayland; and Richard
22 Campanelli, Gammon and Grange, on behalf of the
23 Devotional Claimants.

24 CHAIRPERSON DAUB: Thank you very much.
25 As you know, there have been some settlements. The

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1 Music Claimants, Canadian, and NPR have settled. Is
2 there any letter from the Canadian Claimants?

3 (No response.)

4 NPR?

5 (No response.)

6 I know there are several from Music.

7 Good morning, Fred.

8 MR. KOENIGSBERG: Good morning, Madam
9 Chairman. I am Fred Koenigsberg, with White and
10 Case, on behalf of the Music Claimants, and
11 specifically ASCAP. With me is ASCAP Senior
12 Attorney Bennett Lincoff. Also on behalf of the
13 Music Claimants, representing Broadcast Music, Inc.,
14 normally represented by Charles Duncan of Reid and
15 Priest, who could not be with us today -- I'm sorry,
16 I don't know Mr. Duncan's colleague's name --

17 MR. LURIE: Marc Lurie.

18 MR. KOENIGSBERG: -- and also Laurie
19 Hughes, representing SESAC. We are delighted to be
20 with you today, and especially delighted to be with
21 you having settled.

22 (Laughter.)

23 CHAIRPERSON DAUB: Thank you. I'd like
24 to inform you, on cross-examination the opposing
25 claimants will be represented by only one attorney.

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1 When the time comes, please inform us of the name of
2 the attorney.

3 Now, I'm going to make some comments on
4 various motions pending. I'm sure you were
5 wondering what happened last Friday.

6 The Tribunal has several pending motions
7 and other matters to be taken care of. I trust all
8 of you have received the Tribunal's notice late
9 yesterday. We apologize for the delay. We had to
10 deny PBS' request to move this hearing to a later
11 date, so I am glad you are all here.

12 For the record, I'd like to state that I
13 have dissented from the decision to commence with
14 the hearings today, in light of the fact that the
15 discovery motions were not determined until late
16 yesterday afternoon and essential evidence which the
17 parties need to properly cross-examine witnesses
18 will not be available to them before they testify.
19 Moreover, even the Stage I decision has not been
20 issued as of today.

21 I believe the more efficient and logical
22 way to proceed would have been to resolve the
23 discovery issues before the oral hearing commenced,
24 especially in light of the fact that the Tribunal
25 can only hold nine days of hearing in September.

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1 I would like to deliver our rulings on
2 the motions verbally, and formal written rulings
3 will follow very shortly. This will be rather
4 lengthy, and I'll try to proceed as quickly as I
5 can. The first motion comes from Program Suppliers.

6 Program Suppliers request the Tribunal
7 to compel the National Association of Broadcasters
8 to produce the following documents: (a) A list of
9 the news programs and the identity of the stations
10 broadcasting each program referred to by Richard
11 Ducey in his testimony.

12 The Tribunal ruling is that we deny the
13 request for a list of news programs as unduly
14 burdensome and because Mr. Ducey's testimony can be
15 tested on cross-examination.

16 (b) A list of programs aired by
17 NAB in order to determine whether the shows listed
18 by Mr. Ducey in his testimony are, in fact, a
19 representative sample of the total programs aired by
20 NAB.

21 The Tribunal denies the request for a
22 list of programs as unduly burdensome and because
23 Mr. Ducey's testimony can be tested on cross-
24 examination.

25 (c) A representative sample of the

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1 studies relied upon by Mr. Ducey in testifying that
2 broadcasters are well aware of the viewer intensity
3 with respect to their news programs as this is
4 "documented in countless studies".

5 The Tribunal will deny the request for a
6 representative sample study because Mr. Ducey's
7 testimony can be tested on cross-examination.

8 (d) Program Suppliers request a
9 copy of the survey submitted by Robert LaRose -- it
10 is referred to as NAB Exhibit Number 35 -- for the
11 dates and station identification unredacted or, in
12 the alternative, they wish us to strike the exhibit.

13 The Tribunal denies the request for an
14 unredacted copy of NAB Exhibit 35 since the exhibit
15 is being introduced for the limited purposes set
16 forth by NAB.

17 (e) Program Suppliers move to
18 strike certain witnesses' testimony and an exhibit
19 of Christian Broadcast Network, Inc., Old Time
20 Gospel Hour, Christian Television Corporation, Inc.,
21 Heritage Ministries, and Oral Robert Evangelistic
22 Association, referred to as Devotional Claimants.
23 Specifically, Program Suppliers move to strike from
24 the testimony of Michael A. Salinger, all opinions,
25 observations, and conclusions regarding the study.

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1 Program Suppliers' motion is based on Dr. Salinger's
2 testimony that he has not read the study. Program
3 Suppliers also move to strike from the testimony of
4 David Clark any reference to post-1990 Joint Sports
5 Claimants' Bortz and Company study. Program
6 Suppliers also argue that Devotional Claimants'
7 Exhibit Number 7, entitled Cable Operator Allocation
8 of Value by Distant Signal Program Type - 1990,
9 lacks proper foundation and so should be stricken
10 from the record.

11 The Tribunal denies the request to
12 strike Mr. Salinger's testimony which is being
13 offered merely to establish the merit of studies
14 that rely on measures of viewership and which can be
15 tested on cross-examination.

16 The Tribunal also denies the request to
17 strike Mr. Clark's testimony relating to post-1990
18 Bortz data on the grounds that such testimony is
19 relevant and similar testimony was accepted in the
20 1989 proceeding.

21 The Tribunal also denies the request to
22 strike Devotional Claimants' Exhibit 7 on the
23 grounds that it has proper foundation because it is
24 based on the Bortz study and Mr. Clark will be
25 available for cross-examination on the exhibit.

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1 Program Suppliers move to strike from
2 Public Broadcasting Service's direct case two
3 studies offered by John Fuller. Program Suppliers
4 object to the studies because they were prepared in
5 1993 rather than in 1990. The Tribunal will deny
6 the motion to strike Mr. Fuller's two studies based
7 on the grounds that they are relevant and can be
8 tested on cross-examination.

9 Program Suppliers request that the
10 Tribunal compel Joint Sports Claimants to produce
11 the following documents: (a) Unredacted copies of
12 the questionnaire for the 1989 through 1992 Bortz
13 studies.

14 The Tribunal will deny the requests for
15 unredacted copies for '89 through '92 Bortz studies,
16 however, redacted copies with the respondent's
17 position unredacted must be produced.

18 (b) Program Suppliers request all
19 documents underlying the changes made to the System
20 Operator Program Questionnaire as used in the 1992
21 Bortz study.

22 The Tribunal will deny the request for
23 all documents underlying the change to the Bortz
24 questionnaire on the ground that the changes are
25 explained in the Bortz study.

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1 Program Suppliers request a copy of the
2 study and analysis supporting JSC's claim that
3 pursuant to numerous market research studies and
4 many other analyses the individuals surveyed
5 pursuant to the Bortz study are most responsible for
6 the decisions regarding programming, or an amendment
7 to the decision regarding programming, or an
8 amendment to JSC's Exhibit 1 indicating that any
9 claims regarding the Bortz study respondent
10 programming and responsibilities are based solely on
11 the general experience of Bortz and Company rather
12 than objective data.

13 The Tribunal will grant the request for
14 an amendment to JSC Exhibit 1 indicating that any
15 claims regarding the Bortz Study respondents
16 programming responsibilities are based solely on the
17 general experience of Bortz and Company.

18 Incidentally, this will all be forwarded
19 to you in writing.

20 (c) Program Suppliers request a
21 list of all cable systems selected as part of the
22 sample for the 1989-92 Bortz studies that did not
23 respond to the survey.

24 The Tribunal denies the request for a
25 list of all sample cable systems that did not

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1 respond to the survey on confidentiality grounds.

2 (d) Program Suppliers' request for
3 the documents referred to in the resumes contained
4 at the end of JSC Exhibit 1 or the striking of the
5 resumes from the exhibit.

6 The Tribunal denies the request for
7 documents listed in Mr. Bortz' resume since he will
8 be available for cross-examination. The request for
9 documents listed in the resume of Messrs. Trautman,
10 Broadwell and Worth are moot because the Tribunal
11 will grant the motion to strike these resumes since
12 the individuals will not be available for cross-
13 examination.

14 (e) Program Suppliers move to
15 strike the resumes of James M. Trautman, George E.
16 Broadwell and Michael Worth from the Bortz Study.
17 Program Suppliers base their motion on the ground
18 that the foregoing individuals will not be appearing
19 as witnesses and, therefore, the resumes will not be
20 subject to cross-examination.

21 The Tribunal's ruling is that the
22 resumes of Messrs. Trautman, Broadwell and Worth
23 will be stricken from the record because the
24 individuals are not available for cross-examination.

25 (f) Program Suppliers also move to

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1 exclude the Bortz Study from JSC's direct case.
2 Program Suppliers' argument is twofold: (1) The
3 Bortz Study provides cable operator responses for
4 the years 1989 to 1992, while the current proceeding
5 involves only royalty distribution for the year
6 1990. The Bortz Study reveals that Bortz and
7 Company had no involvement with the study conducted
8 in 1990 and, therefore, Paul Bortz, President of
9 Bortz and Company, cannot serve as the sponsoring
10 witness for the 1990 survey, which is the only
11 relevant study to this proceeding.

12 The Tribunal denies the request to
13 exclude the Bortz Study on the ground that the
14 Tribunal has already denied an identical request in
15 the 1989 Cable Royalty proceeding, and the Tribunal
16 agrees with JSC that Mr. Bortz' non-participation in
17 the actual collection of the 1990 data does not
18 disqualify him as a sponsoring witness.

19 (g) Program Suppliers move to
20 strike the 1991 and 1992 data from the Bortz Study.
21 Program Suppliers maintain that the relevant time
22 period for this proceeding is the year 1990 and,
23 therefore, data for time periods other than the year
24 1990 are "simply irrelevant".

25 The Tribunal denies the request to

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1 strike the 1991 and 1992 Bortz data on the grounds
2 that such data is relevant and similar data has been
3 accepted by the Tribunal in the past.

4 Now comes motions from National
5 Association of Broadcasters. NAB moves to compel
6 Program Suppliers to produce the following
7 underlying documents or, in the alternative, to
8 strike portions of the direct case and preclude
9 introduction of evidence. (a) NAB requests a blank
10 form of the representation agreement referred to by
11 Allen R. Cooper in his testimony or, in the
12 alternative, NAB moves to strike Mr. Cooper's
13 testimony on pages 12 and 13, relating to
14 representation of claimants.

15 The Tribunal denies the request for a
16 blank representation agreement on the ground that it
17 is irrelevant.

18 (b) NAB requests the database in
19 computer-readable form utilized by Stanley M. Besen
20 in his Cable System Analysis or, in the alternative,
21 NAB moves to strike the study presented by Dr. Besen
22 and all testimony related thereto.

23 The request for Dr. Besen's database is
24 moot since Program Suppliers have represented that
25 they will provide it.

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1 (c) NAB requests the underlying
2 data of the A.C. Nielsen Meter-Based Study presented
3 by Paul Lindstrom or, in the alternative, NAB moves
4 to strike the Nielsen Meter-Based Study.

5 The Tribunal grants the request for
6 underlying data on a program and station basis for
7 the Meter-Based Study. The Tribunal will permit Mr.
8 Lindstrom to give all testimony and be cross-
9 examined prior to the data being provided. However,
10 Mr. Lindstrom will have to be available for further
11 cross-examination once the data is provided. The
12 data should be provided expeditiously. If the data
13 is not provided, then the failure to do so will go
14 to the weight of the evidence.

15 (d) NAB requests that the Tribunal
16 strike Jack Valenti's testimony on pages 4 and 5
17 concerning the average cost of production. NAB
18 bases their motion on Program Suppliers' refusal to
19 comply with NAB's request for documents underlying
20 the discussion of production costs.

21 The Tribunal denies the request to
22 strike Mr. Valenti's testimony since it can be
23 tested on cross-examination.

24 (e) NAB, by letter of September 7,
25 1993, advises the Tribunal that discovery requests

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1 regarding Program Suppliers' witness, Dr. Besen,
2 were not complied with until this morning.
3 Therefore, NAB requests that Mr. Besen's oral
4 testimony currently scheduled for Thursday,
5 September 9, 1993, be rescheduled for later in
6 September or, in the alternative, Dr. Besen be
7 subject to being recalled at a later time.

8 I guess "this morning" meant the date
9 that NAB sent their letter.

10 The Tribunal denies the request on the
11 ground that NAB will have at least two days to
12 prepare for Dr. Besen's cross-examination. This, of
13 course, is assuming that, as NAB represents, Dr.
14 Besen will not testify until Thursday. Is that
15 correct, Mr. Lane?

16 MR. LANE: Yes.

17 CHAIRPERSON DAUB: Thank you.

18 Now comes motions from PBS. PBS moves
19 to compel discovery of Program Suppliers' direct
20 exhibit MEK-8, a computer printout which provides
21 the results of the study. Program Suppliers filed
22 this exhibit only with the Tribunal. Program
23 Suppliers responded that the requested document had
24 been provided. So, the ruling for a motion to
25 compel is moot.

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1 In a second motion, PBS moves to compel
2 discovery relating to the Program Suppliers' Meter-
3 Based Study. Specifically, PBS requests that the
4 Tribunal compel Program Suppliers to produce
5 background information about the meter-households
6 and information demonstrating on a station-by-
7 station and program-by-program basis, the viewing
8 results of the Meter-Based Study.

9 The Tribunal grants PBS' motion for
10 background information about the meter-households
11 and, as stated earlier in response to NAB's request
12 for underlying data regarding the Meter-Based Study,
13 the Tribunal will grant the request for program and
14 station-based underlying data.

15 PBS also moves to preclude Program
16 Suppliers from presenting statistical evidence at
17 the outset of the hearing. PBS notes its comments
18 on Program Suppliers' motion for reconsideration of
19 order establishing procedural schedule. In PBS'
20 comments, it has requested that the Tribunal
21 consider starting the hearing later in September or,
22 in the alternative, requiring that Program Suppliers
23 provide adequate time for discovery before
24 presenting witnesses during the hearing. According
25 to PBS, there is currently a real threat of

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1 procedural unfairness because Program Suppliers have
2 not provided parties with the discovery documents
3 needed to cross-examine Program Suppliers' first
4 four witnesses. Consequently, PBS has renewed its
5 request that Program Suppliers not be permitted to
6 permit witnesses on these statistical studies, the
7 diary and meter-based study, until a reasonable time
8 after discovery is provided.

9 As stated earlier, the Tribunal will
10 permit Program Suppliers to introduce oral testimony
11 regarding the study and meter-based study, with the
12 understanding that although oral direct testimony
13 and cross-examination will be permitted prior to
14 Program Suppliers complying with the discovery, the
15 witness will be available for further cross-
16 examination once the discovery material is provided.

17 Now comes Joint Sports Claimants'
18 motion. By pleading of August 26, 1993, Joint
19 Sports Claimants reserved their right to file
20 discovery motions based on the fact that they were
21 still in the process of attempting to obtain
22 discovery documents from Program Suppliers. On
23 September 3, 1993, JSC filed a motion requesting
24 that the Tribunal strike the testimony of Paul
25 Lindstrom. According to JSC, their motion is based

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1 upon Program Suppliers "failure to provide
2 underlying documentation necessary to cross-examine
3 Mr. Lindstrom".

4 The Tribunal denies the request to
5 strike Mr. Lindstrom's testimony, as discussed
6 above.

7 That's all the motions. It was lengthy
8 and, as I stated earlier, we will be distributing
9 our rulings in writing very shortly.

10 The Tribunal will also issue an order
11 addressing Program Suppliers' request to reconsider
12 the procedural schedule shortly.

13 Is there any preliminary matter to
14 address?

15 COMMISSIONER GOODMAN: I have a comment,
16 Cindy.

17 CHAIRPERSON DAUB: Sure.

18 COMMISSIONER GOODMAN: In behalf of the
19 Tribunal's majority, I'd like to respond and explain
20 briefly why Commissioner Damich and I voted to
21 proceed with the hearings as scheduled.

22 We believe it is essential for the
23 hearings to begin expeditiously if they are to be
24 completed in 1993. Moreover, we recognize that the
25 parties have prepared for the dates that we

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1 announced sometime ago. If we were to delay
2 commencement of the hearings, there could be no
3 assurance that the parties or the witnesses would be
4 available on the substituted dates.

5 For those reasons, we have decided to
6 provide for the possible recall for cross-
7 examination of those few witnesses who will testify
8 within the next few days, if their testimony
9 requires that additional underlying data be
10 provided. Under these unique circumstances, we
11 believe our decision to adhere to our schedule is
12 the best one for the parties.

13 There has been a great deal of
14 prehearing activity which has delayed commencement
15 of the hearings. Any further delay would have been
16 unconscionable.

17 Finally, it is my understanding that the
18 CRT has, in fact, rendered a decision in the Phase I
19 proceeding. That written decision will be
20 circulated shortly.

21 COMMISSIONER DAMICH: I have a comment,
22 too.

23 CHAIRPERSON DAUB: Please.

24 COMMISSIONER DAMICH: Yes. I would like
25 to request on behalf of the Tribunal a witness list

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1 for the next eight days of this proceeding as soon
2 as possible. Of course, I understand that it will
3 be subject to change depending upon length of cross-
4 examination, et cetera, but the Tribunal would like
5 at least a projected list of witnesses for every day
6 of the proceedings during the month of September.

7 Secondly, just to inform you, the daily
8 schedule that we will maintain is to begin the
9 hearings at 10:00 and to conclude them at 4:00, and
10 to take a lunch break of one and a half hours to
11 begin normally around noon, but will be flexible, of
12 course, depending upon the state of direct or cross-
13 examination at that time. Thanks.

14 CHAIRPERSON DAUB: Is there any other
15 preliminary matter? Mr. Stewart?

16 MR. STEWART: Madam Chairman, I don't
17 want to delay this, but I would ask leave to renew
18 my request to call Dr. Besen back for further cross-
19 examination at the appropriate time tomorrow.

20 The disk that I received yesterday
21 morning was not readable by my computer or my
22 client's computer. I finally received a disk with
23 the underlying data later yesterday. I finally
24 received a printout of that data at about 8:00 p.m.
25 yesterday. I have one day to review it and that day

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1 is today, and I'm in the hearing today. I will do
2 my best not to have to extend Dr. Besen's cross-
3 examination further, but I just wanted to note that
4 for the record today, if it becomes necessary for me
5 to renew my request tomorrow.

6 CHAIRPERSON DAUB: Mr. Lane, any
7 comments?

8 MR. LANE: I have a couple of comments
9 just to the witness, if I could just give it orally,
10 if that's agreeable. It will be Mr. Lindstrom, then
11 Mr. Besen and, assuming what we have done is have
12 Mr. Cooper and Ms. Kessler as kind of our designated
13 hitters. We don't know how long the cross-
14 examination of Mr. Lindstrom and Mr. Besen will
15 take. If there is time, Mr. Cooper will be our next
16 witness. That is for the first three days.

17 Then, when we go to the 15th, Mr.
18 Thrall, who is an out-of-town witness, will testify.
19 If we haven't done Mr. Cooper, then we'll just have
20 to keep pushing him back to some other date. So,
21 the 15th would be Mr. Thrall, the 17th is Mr. Green,
22 the 27th is Mr. Valenti. Then after Mr. Valenti is
23 Mr. Kirchheimer, Mr. Sieber, and then Ms. Kessler.
24 Again, she would be free throughout the hearing so
25 if we have some free time she could testify, if Mr.

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1 Cooper has finished his testimony and cross-
2 examination.

3 COMMISSIONER GOODMAN: Excuse me -- did
4 you mention Mr. Claster?

5 MR. LANE: I'm sorry -- Mr. Claster is
6 the 30th.

7 COMMISSIONER GOODMAN: Before Ms.
8 Kessler?

9 MR. LANE: Yes. We're keeping Mr.
10 Cooper and Ms. Kessler because they are in-town and
11 they have the most flexibility as to when we could
12 fit them in, and Mr. Claster is out-of-town, so he's
13 the 30th.

14 CHAIRPERSON DAUB: I was going to ask
15 Mr. Cooper and Ms. Kessler how they feel being
16 pushed around like that.

17 (Laughter.)

18 MS. KESSLER: Wonderful.

19 MR. GARRETT: They're used to it.

20 MR. LANE: Well, I would like to note
21 for the record that we have done this to try to
22 accommodate the dates that you gave us. I don't
23 mean the days -- I mean the exact dates and
24 witnesses' schedules, and Ms. Kessler and Mr. Cooper
25 have graciously agreed to kind of just fit in where

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1 they can.

2 CHAIRPERSON DAUB: With regard to the
3 procedural schedule, I'd like to make one brief
4 comment. When we put the rebuttal date at October
5 1st, it was not necessarily limiting any of the
6 parties or that that date was set in concrete
7 whatsoever. I believe that my colleagues would
8 agree with me that we believe in all due process and
9 we would like to hear all the information necessary
10 for us to render wise and fair decisions.

11 COMMISSIONER GOODMAN: Mr. Stewart, may
12 I ask a clarification of your statement a moment
13 ago. Were you presenting a motion at that time, or
14 were you asking for the right to -- or were you
15 stating that you wanted to reserve the right to move
16 to have Mr. Besen, I believe it is, cross-examined
17 at a later time?

18 MR. STEWART: Given the schedule now,
19 I'm not going to move to have him cross-examined at
20 a later time. It may be necessary for me to ask to
21 have him return for cross-examination if I'm not
22 able to review it before tomorrow.

23 COMMISSIONER GOODMAN: Thank you.

24 MR. LANE: Could I just make one comment
25 on that point?

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1 CHAIRPERSON DAUB: Certainly.

2 MR. LANE: I'd like the record to show
3 that we had given Mr. Stewart tapes earlier than
4 yesterday late in the afternoon, and it was a
5 failure -- and I'm not a computer whiz so I don't
6 know what happened, but they could not read the
7 tapes. When they told us, we worked with them to
8 try to get them a new tape -- and I believe, John,
9 you printed out the -- did we give you a printout,
10 or did your people do that? I don't know how the
11 printout -- but I know that there was conversation
12 between the parties about what was going wrong and
13 trying to solve it on both sides.

14 CHAIRPERSON DAUB: Mr. Stewart?

15 MR. STEWART: We made the request on
16 August 20th. Last Thursday, we got some diskettes
17 that did not include any of the information that was
18 relevant. I worked throughout the weekend to try to
19 get that information. Finally, yesterday morning we
20 received two diskettes that did include the proper
21 information for the first time, and they were
22 readable only by a computer program that was used by
23 Dr. Besen, that was not available to me or to my
24 client. And, finally, we were able to get Dr. Besen
25 to produce the disk in a format that could be read

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1 by my computer, and my own people were able finally
2 to produce a printout last night which, by the way,
3 encompasses some 100,000 or so data entries, which
4 is what I have to review before cross-examining Dr.
5 Besen tomorrow, despite the fact that my request was
6 made on August 20th.

7 CHAIRPERSON DAUB: Thank you.

8 MR. LANE: I'd like to raise one other
9 point. I would like to move at this time, orally,
10 and I will supplement it for reconsideration of your
11 ruling, that the Nielsen Company should provide
12 program and station-based information for the
13 metered study.

14 Mr. Lindstrom covers this in his written
15 direct testimony and we will cover it this morning.
16 I think that will show you the factual basis why
17 such information cannot be provided and, once that
18 factual basis is established, I will file a written
19 motion for you to reconsider that ruling.

20 CHAIRPERSON DAUB: Thank you, Mr. Lane.
21 Any other matters?

22 (No response.)

23 Well, I don't see any so we will proceed
24 with the direct case. Mr. Lane, if you will
25 proceed. Do you have an opening statement?

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1 MR. LANE: I do, Madam Chairman.

2 CHAIRPERSON DAUB: Please go ahead.

3 MR. LANE: Madam Chairman,
4 Commissioners, in past proceedings, Program
5 Suppliers' case has relied primarily on Nielsen
6 diary-based studies. Certainly, that's what you
7 think of when you think of Program Suppliers' case
8 and, I would daresay, what most of the parties think
9 of.

10 In 1990, for the first time, we are
11 presenting you with a large amount of new evidence
12 that is based on the diary studies. First, we have
13 a meter-based study. The meter-based study was
14 introduced to take care of some of the concerns that
15 the Tribunal had raised in the 1989 proceeding,
16 about data collection. We also have done a different
17 sample selection process that addresses some of the
18 concerns that you've raised there.

19 So, this is an entirely new piece of
20 evidence in the 1990 proceeding. It indicates, as
21 you will see and hear this morning, that
22 approximately 83 percent of the viewing of all
23 distant signals in 1990 went to Syndicated
24 programming.

25 For the first time in the 1990

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1 proceeding, Program Suppliers are offering a cable
2 operator study. In the past, you have heard, you
3 have seen cable operator studies that address the
4 question of "What do operators say that they would
5 do?" Our study in 1990 addresses the question of
6 what the operators actually did, and what
7 programming do they value when they choose distant
8 signals, particularly in the 1990 period.

9 The results of that study show that
10 Syndicated programs are valued by cable operators
11 ten times more than sports programming, and even
12 higher times more than other types of programming
13 here in Phase I.

14 We've also presented a diary-based study
15 in 1990. We've improved it, we believe, over the
16 1989 study. The results of the diary study are
17 consistent with our past diary-based studies and,
18 again, showing that Syndicated programming receives
19 approximately 80 percent of the viewing on a distant
20 signal basis.

21 In the 1990 proceeding, we'll be
22 presenting testimony of several syndicators. These
23 witnesses will address the wide range and types of
24 Syndicated programming available in 1990. We will
25 have witnesses from companies that supply movies,

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1 that supply talk shows, that supply entertainment
2 programs, that supply children's programs.

3 So, we think we'll give you a better
4 idea of the full plate that we have within the
5 Syndicated program category and how, among the
6 various programs that we offer, are programs that
7 fill the niches that the Tribunal has been concerned
8 about in various proceedings. In other words, we're
9 not all Petticoat Junction or the Beverly
10 Hillbillies, the two programs that you seem to think
11 our whole category of particularly series comes down
12 to, and we're going to concentrate on showing you
13 that it isn't limited to reruns of off-network
14 programs but, indeed, offers a very broad array of
15 programs that individually may be very appealing to
16 different segments of the market.

17 These syndicators will give you an idea
18 as well of the value that they placed on these
19 programs in 1990, and the types of things that they
20 look for in the marketplace to judge that value.

21 Finally, Program Suppliers will be
22 offering testimony from Turner Broadcasting this
23 year. As you know, WTBS is the largest, or the most
24 widely carried of the distant signals. Our
25 testimony will be offering you insight into how WTBS

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1 actually decided what programming to put on, and how
2 they actually decided what value, or what they
3 thought the value of different types of programming
4 was in 1990. Again, we think this is actual
5 behavior of what happened in the real marketplace in
6 1990.

7 In sum, Program Suppliers will present
8 to you considerable objective evidence, the bulk of
9 which will be new evidence that we haven't presented
10 in past proceedings, about what actually happened in
11 the distant signal marketplace. You'll have
12 evidence about what subscribers actually viewed in
13 1990. You'll have evidence about what programming
14 cable operators valued in 1990 when they chose
15 distant signals. You'll have evidence about what
16 programming was available in the Syndicated
17 programming category, how the sellers -- that is,
18 the syndicators that we represent -- value that
19 program, and you'll have evidence from WTBS about
20 what tools and what programming was used by WTBS,
21 the most widely carried station on a distant signal
22 basis in 1990, used to attract and keep subscribers
23 to their station.

24 All of this evidence, I would suggest to
25 you, points to a conclusion that the Syndicated

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1 program category is entitled to at least 80 percent
2 of the 1990 royalty fund. Thank you very much.

3 CHAIRPERSON DAUB: Thank you, Mr. Lane.

4 MR. LANE: And I would call Paul
5 Lindstrom to the stand at this time.

6 CHAIRPERSON DAUB: Mr. Lindstrom,
7 welcome to the Tribunal.

8 Whereupon,

9 PAUL LINDSTROM
10 was called as a witness and, having first been duly
11 sworn, was examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. LANE:

14 Q Would you please state your name for the
15 record?

16 A Paul Lindstrom.

17 Q Did you prepare the Testimony of Paul
18 Lindstrom Before the Copyright Royalty Tribunal,
19 consisting of ten pages, which was previously
20 exchanged in this case?

21 A Yes, I did.

22 Q Do you have any corrections to that
23 testimony?

24 A There's a couple of minor ones. In the
25 first paragraph on page 1 where I said I'd been

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1 designing for "12 years", it's actually been over
2 14.

3 On page 7, we refer to the number of
4 stations in total, in the fifth paragraph down, as
5 well as the third paragraph down refers to "734
6 stations", it should be "754". And in the fourth
7 paragraph it says "684", it should refer to "704".
8 There is also a typo on page 10, on the data chart,
9 the note underneath which says "These results using
10 e standard errors", and it should actually be "the
11 standard errors". And also one other note on page
12 1. It says that in paragraph four, about half-way
13 down, "In 25 of the larger TV markets", and we
14 presently have 29 metered markets.

15 Q Are those all the corrections that you
16 have, Mr. Lindstrom?

17 A Yes, it is.

18 Q By whom are you employed, Mr. Lindstrom?

19 A I'm employed by Nielsen Media Research.

20 Q What is your position?

21 A I'm Vice President and Product Manager
22 with Nielsen Home Video Index.

23 Q Would you briefly describe your duties
24 and responsibilities?

25 A I sell and design customized research to

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1 meet specific needs of the people within the
2 television business generally relating to the new
3 technologies.

4 Q How long have you been with the Nielsen
5 Company?

6 A I've been with Nielsen approximately 15
7 and a half years.

8 Q Would you briefly describe your career
9 with Nielsen?

10 A I originally started out with Nielsen as
11 an analyst for NTI, which is the division of Nielsen
12 that handles the measurement of the broadcast
13 networks, all meter-based at that time.
14 Approximately a year later, I went to work with an
15 area of Nielsen which later became NHI. This area
16 was set up in order to do custom research for
17 various television uses, but it came at the point in
18 time where cable television was just about to begin
19 to boom, and ultimately evolved into becoming the
20 arm of Nielsen which handles the measurement of
21 cable television, and has since gone from being a
22 two-man area at that point in time, to over 25 on
23 our market staff and several hundred in our
24 production facilities in Florida.

25 Q Have you been involved in development

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1 the Nielsen viewing studies that have been used in
2 the CRT proceedings over the years?

3 A I have been involved in the design work
4 and production of the MPAA studies for the CRT since
5 the 1980 hearings.

6 MR. LANE: Madam Chairman, I would
7 suggest that this is a good time for voir dire, if
8 that's agreeable with you.

9 CHAIRPERSON DAUB: Any voir dire?

10 MR. GARRETT: Madam Chairman, I have no
11 questions on voir dire.

12 CHAIRPERSON DAUB: Mr. Stewart?

13 MR. STEWART: No questions.

14 CHAIRPERSON DAUB: Mr. Hester?

15 MR. HESTER: I have no questions.

16 CHAIRPERSON DAUB: Mr. Gottfried?

17 MR. GOTTFRIED: We have no questions.

18 CHAIRPERSON DAUB: Thank you. Proceed.

19 MR. LANE: Thank you.

20 BY MR. LANE:

21 Q What is the charter of the Nielsen
22 Company, Mr. Lindstrom?

23 A Nielsen's charter is to act as an
24 independent measurement service, to provide unbiased
25 estimates of television viewing behavior.

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1 Q How are the estimates of viewing
2 behavior used?

3 A The television ratings provide an
4 estimate of the audience size and are a barometer of
5 the viewing habits of the American population.
6 Advertisers spend approximately \$30 billion a year
7 on television advertising time and, in return, they
8 want to have certain guarantees that the commercials
9 that they are placing on these television outlets
10 are being seen by the audiences that they've been
11 told that they are. Our role is to act as an
12 independent seller of information to both the buyer
13 and seller of television ad time to provide a
14 negotiation tool for those purchases of commercial
15 time. In the broadest sense, that would describe
16 it.

17 Q Who uses Nielsen information?

18 A Nielsen data is presently used by
19 virtually everybody within the television business,
20 or every group, I shouldn't say every single
21 person -- but virtually every group involved within
22 the television business, whether it be local
23 stations, agencies, advertisers, local cable
24 systems, producers, talent agencies, broadcast
25 networks, cable networks, and on, and on.

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1 Q What are the primary Nielsen measurement
2 services?

3 A There are four basic subdivisions of
4 Nielsen Media Research. The first is NSI, or the
5 Nielsen Station Index, which provides data on the
6 local market television viewing -- for instance, New
7 York, or Washington, or Los Angeles.

8 The second is NTI, or Nielsen Television
9 Index. This group is providing data on the viewing
10 of the broadcast networks, meter-based data and
11 nationally.

12 The third group is NSS, Nielsen
13 Syndication Service. NSS provides estimates of the
14 viewing audience for Syndicated programs.

15 And the fourth is Nielsen Home Video
16 Index, which handles really all non-traditional
17 television, which is including cable, pay TV, VCRs,
18 video games, BDS, teletext, videotext, et cetera,
19 any of the non-traditional uses, but probably the
20 bulk of our business is in the measurement of the
21 ad-supported basic cable services.

22 Q Is the NSI diary measurement system the
23 basis for the past viewing studies that have been
24 presented to the Tribunal?

25 A Yes, it is.

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1 Q What is the People-Meter Sample?

2 A There are two basic methodologies that
3 are used by Nielsen, one is the diary and the second
4 is the People-Meter. The People-meter forms the
5 basis for the core of the national television
6 measurements, be it of the broadcast networks,
7 syndication, or cable networks. And the People-
8 meter basically consists of a small microprocessor
9 about the size of a cigar box, that is attached to
10 each television set in the household, which measures
11 what channel the set is tuned to as well as all
12 inputs into the television, whether it be a cable
13 converter, or a VCR, or any other form of device
14 that can feed into that, so we can identify what's
15 being used.

16 This microprocessor checks the tuning
17 position of the television set and the other devices
18 22 times a minute -- that's approximately every 2.7
19 seconds -- and identifies what channel the set is
20 tuned to. That is the household measurement, and
21 it's a passive measure. It doesn't rely on what
22 people do other than if you're watching TV, we're
23 going to know it and we're going to know which set
24 it's tuned to.

25 In addition, there is an accompanying

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1 remote control that people have, very similar to a
2 TV remote control, that will allow anyone in the
3 household to be able to make viewing entries from
4 anywhere within the room itself.

5 What they do is, there's a button that's
6 there for each member of the household, as well as a
7 series of extra buttons for visitors, and it allows
8 them to hit in whether or not each person is
9 watching, and there's kind of accompanying lights on
10 this cigar box, if you want to think about it that
11 way -- green for if that person is viewing, red if
12 they're not -- and an Okay button that would let
13 you say "All right, what's going on is okay", or you
14 can make changes, and that forms the basis for the
15 collection of the people information that's done.
16 Although I would stress that it's important to keep
17 in mind that the research that we're submitting here
18 is all household-based, so it is a passive
19 measurement for the viewing data with what's being
20 done for the homes themselves.

21 Q Are you aware of the purposes for which
22 MPAA uses Nielsen information in the distribution
23 proceedings?

24 A Yes, I am.

25 Q Could you briefly describe your

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1 understanding of that?

2 A It's my understanding that there are two
3 basic needs that eh MPAA has expressed over the
4 years. The first is for submission to the Tribunal,
5 and the second is for their own distribution of
6 royalties to companies that they represent in the
7 hearings.

8 Q Did MPAA ask Nielsen for Nielsen's
9 recommendation concerning what viewing information
10 should be used for this 1990 Phase I proceeding?

11 A Yes. We were approached by the MPAA and
12 asked if we were to forget about the second portion
13 of their needs, their distribution to their member
14 companies, and concentrate strictly on the work that
15 was submitted on the broad program categories to the
16 Tribunal, what would be our recommendation as to the
17 best approach.

18 As a result, we came back to them and
19 said that under those conditions, assuming the broad
20 categorizations, that our recommendation would be to
21 go with the People-meter as a superior methodology
22 for strictly this portion of their needs.

23 Q Could the People-meter data be used on
24 an individual program basis for distant signal
25 viewing?

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1 A In the past when questions have come up
2 along these lines of whether or not we could use a
3 People-meter based study, we had always rejected the
4 idea because of MPAA's need for the second piece,
5 the idea of the individual station and program data
6 for their own distribution.

7 The reason for that is that it's
8 important to keep in mind that we have a good sample
9 size for a national measurement, and for virtually
10 all of the needs of our national clients -- I should
11 back up for a minute without making this too
12 confusing -- and the samples were established to
13 produce results that would be solid.

14 When you get down to a level where
15 you're talking about individual stations and, in
16 many cases, very small stations and, furthermore,
17 restricted to cable and distant viewing, you're
18 talking about a very limited number of people that
19 can receive those signals.

20 We've established minimum sample sizes
21 for our ratings reports of approximately 145 as a
22 minimum sample size for individual day reporting.
23 One hundred forty-five is approximately 3 percent of
24 the 4,000 People-meter households. Three percent
25 translated on a national basis is actually -- again,

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1 as an approximation -- somewhere around 2.7 million
2 homes, so that what we're saying is that in order to
3 be able to look at data on an individual day basis,
4 you really need to have at least 2.7 million homes
5 that can, in fact, receive that programming source.
6 The vast majority of stations that are included in
7 the 180 that we have in these exhibits are well
8 below those types of levels and, therefore, it would
9 be producing information that, if looked at on an
10 individual station level, would be likely to bounce
11 all over the place as a result of the sample sizes
12 and that we felt would just not be good data and, in
13 fact, would not produce for the MPAA if what they
14 were trying to use was to look at that individual
15 station information. On a broad, program category
16 basis, however, the sample sizes are sufficient.

17 Q Mr. Lindstrom, how can the People-meter
18 data be used to determine viewing for broad program
19 categories when the same information cannot be used
20 to determine distant signal viewing for individual
21 programs?

22 A Again, it's important to keep in mind
23 that as you aggregate information, you're building
24 sample sizes that bring stability to the numbers
25 that you're looking at. In many ways, an example to

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1 think about would be if we were to take, for
2 instance, our 4,000 metered-panel and divide it up
3 into groups of people of five homes.

4 You could look at their television
5 viewing information but, certainly, five households
6 is not going to tell you anything, and virtually the
7 results could be anything you could think of. You
8 would fully expect that it would be, that in the
9 broad spectrum you'd find five people in all kinds
10 of groups who are going to behave differently.

11 On the other hand, once those groups of
12 five homes are, in fact, built up -- in this case,
13 on a national basis -- to 4,000, there is a
14 sufficient sample size and sufficient stability in
15 the numbers to make an adequate representation of
16 what all of the people in the U.S. are.

17 It's a very similar situation to trying
18 to look at information on an individual station
19 basis which, in and of itself, will be very
20 unstable, but once it's accumulated over time.

21 I would use one other example because I
22 think that this is very key, and that would have to
23 do with the broadcast networks, just as one example.
24 And in this case -- say, it's CBS -- we are
25 producing numbers regularly for CBS programs,

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1 obviously, and it becomes part of the foundation of
2 our service. On the other hand, if one were to try
3 and go in and look at television ratings for
4 individual CBS affiliates, certainly in some cases
5 the numbers would have sufficient sample size but,
6 in many other cases, they wouldn't and, in fact, we
7 would not produce that type of data either -- that
8 is, once it's built up the individual affiliates to
9 the total, that it, in fact, becomes numbers worth
10 looking at.

11 Q Mr. Lindstrom, could you tell us what a
12 rating is?

13 A I suppose that's always a good way to
14 start, to make sure that everybody is on an even
15 footing in their understanding of what we're talking
16 about. A rating is probably the most common number
17 that's used by Nielsen, and certainly widely
18 reported in the press and magazines and newspapers,
19 et cetera.

20 Very simply, a rating is a statistical
21 estimate of the number of homes tuned to a program
22 and expressed as a percentage, so that, for
23 instance, a rating of 15 for a network TV program,
24 all that means is that we're estimating that 15
25 percent of the homes in the U.S. are tuned into that

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1 particular program.

2 Q How are those estimates derived?

3 A In the case of the national figure, the
4 estimates are derived from a sample, and that sample
5 being the People-meter households.

6 Q Why are samples used?

7 A It seems pretty basic, but it's always
8 important to keep in mind that the answer on that is
9 it's obviously very impractical, if not impossible,
10 to go out and get a complete count of the program-
11 by-program viewing information of the more than 90
12 million households that are out there, and that you
13 have it further complicated, even if something like
14 that could be done, that it's important to be able
15 to measure what those people are doing on a regular
16 basis, to see the trends of how that's viewing over
17 time, or whether it's changing up or down, so that
18 you end up saying, "Well, that, in fact, then is an
19 impossibility and impractical", so that what we
20 would need to do is to take a sample of the homes in
21 order to estimate what, in fact, is going on on a
22 national basis.

23 Q Are samples widely used outside the
24 measurements that you do?

25 A Samples are used all the time -- you

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1 know, whether it's being the indices of the cost-of-
2 living, or retail sales, unemployment rates. The
3 Census Bureau, in fact, is using quite a bit of
4 sampling information in their census data. All of
5 these are kind of based on samples, but the one that
6 we always like to use as an example is saying, you
7 know -- virtually everybody in here has gone in for
8 a blood test -- and it certainly would be rare for
9 someone to say, "Well, we don't think samples work,
10 take it all" -- you know, it's just a sample has
11 virtually become a part of everyday life in America
12 at this point in time.

13 Q How large is the People-meter sample of
14 households?

15 A The People-meter sample consists of
16 approximately 4,000 homes.

17 Q Does a 4,000-household sample provide
18 sufficiently reliable estimates of national
19 television audiences?

20 A Yes, it does.

21 Q What is the basis for your stating that?

22 A It's really twofold, the first of which
23 is the most obvious one, which is that our clients
24 seem to think that it is. Ultimately, sample sizes
25 are a decision that comes down to "what is the cost

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1 of a mistake" and, therefore, as a consequence, the
2 various participants, the buyers and sellers, want
3 to make sure that they are going to have as solid a
4 number as can be justified based upon the dollars
5 that are being negotiated, and the two sides have
6 agreed that the 4,000 sample at this point in time
7 is sufficient for their needs.

8 Now, I think it is worthwhile giving an
9 example to kind of show why that is the case, why
10 they feel that 4,000 is an adequate number, and I'll
11 just make an example in order to point that out. If
12 we go ahead and say that a program has a 20 rating,
13 or 20 percent of the homes were watching a program,
14 and we were to poll a whole slew of 4,000 different
15 households, if we were to poll a thousand different
16 samples of 4,000 homes, what you would find is that
17 virtually all of the samples -- and in this case 995
18 out of those thousand -- would end up finding
19 ratings that would fall between a range of 18.2 and
20 21.8 -- that is, plus-or-minus 1.8 -- rating points
21 on the 20 rating.

22 And, so, being virtually certain -- you
23 know, 995 times out of a thousand -- that the real
24 rating would fall within that small a range, has
25 been adequate for all practical purposes for the

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1 decisions that are being made.

2 It should also be pointed out that, in
3 addition, it's rare except in the case of certain
4 specials or one-time-only events, that decisions on
5 either advertising or programming are based on
6 individual programs that you're building over time
7 and averaging, which ends up actually decreasing the
8 range around that error -- of lowering the standard
9 error by aggregating the data.

10 Q Did you also provide an illustrative
11 example of why a 4,000 size sample is valuable?

12 A I kind of pointed out -- I don't know if
13 people have it here -- but it's kind of an example
14 that we like to use -- if you turn to --

15 Q Page 4 of your testimony.

16 A It's actually Attachment A -- this one
17 (indicating) -- because it helps point out how
18 samples work, and why.

19 The top photograph, which we're calling
20 A -- and it didn't xerox as well as I would have
21 liked here, so it doesn't quite make the point as
22 well, but you can use your imagination a little
23 bit -- but that picture is composed of several
24 hundred thousand dots. And let's think about that
25 whole accumulation of dots as being the total

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1 sample, and each of the individuals as being the
2 equivalent of households. And we can draw several
3 samples. And in doing that, we've recreated the
4 pictures using 250, 1,000 and 4,000 dots, which are
5 the photos that are on the bottom -- and they really
6 represent a specific kind of sample design called an
7 "area probability sample" because the black and
8 white dots in the sample are distributed in
9 proportion to their distribution in the original
10 picture -- more black dots in the dress, more white
11 dots in the face, et cetera. And if you think about
12 them as homes adding up to the total U.S. population
13 instead of dots which add up to pictures, you have
14 kind of a basic idea of the sampling method that's
15 used by Nielsen for arriving at the national
16 rating -- and we can talk about how that goes in a
17 few minutes -- but if you put the page down and step
18 back a few feet or hold it out, you'll notice an
19 interesting thing as you look at the pictures.

20 Your eye will adjust to the overall
21 image and stop trying to read the dots, and you'll
22 see that, in fact, the 250 dot picture actually
23 provides a recognizable photograph -- recognizable,
24 yes, but not a whole lot of detail -- so that when
25 you go in and take a look at the next one, the 1,000

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1 dot sample -- again, you hold it out a little bit,
2 you'll see that, in fact, it's quite a good photo
3 that begins to appear. It's very recognizable. And
4 if, in fact, all we wanted was a good idea of what
5 this girl looks like, it would probably be quite
6 adequate.

7 The other interesting thing about this
8 that relates to sampling is that the 1,000 dot
9 photograph is about twice as sharp as the 250 dot
10 photo because it has four times as many dots, and
11 the same thing is true with sampling. In order to
12 double the accuracy, or to have the standard error
13 is the other way to think about it, you must
14 quadruple the sample size. And, so, these are just
15 some sort of illustrations of some basic sampling
16 rules that go into effect with the construction of
17 the national sample.

18 Q Does Nielsen attempt to pick 4,000
19 households that are representative of all television
20 households in the United States?

21 A We use very scientific sampling
22 procedures to randomly select about 5,000 housing
23 units from the U.S. Census Bureau's count of all
24 housing units in the country. Homes that are
25 occupied and have a TV set are asked to become part

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1 of our sample.

2 To just give you a very brief idea of
3 how it works, we use what's known as an "area
4 probability sample" and, in effect, what we're doing
5 is dividing the country up into counties and blocks
6 of counties, so that the whole U.S. is subdivided in
7 this fashion.

8 We then are using a sampling procedure
9 in order to sample these groups of counties. Once
10 we're down to this county level, we go in and take a
11 look at the actual number of housing units in what
12 are known as "block groups", usually of about 200
13 homes.

14 We then systematically sample again
15 within the block groups, to come up with
16 representative areas, and we send our field force
17 out to the sampled block groups to actually walk the
18 streets and map out the homes, to make sure that
19 we're not missing anything that's included in the
20 census data, that there isn't new construction, that
21 there aren't people who are living in what you would
22 consider weird kinds of housing units -- you know,
23 we have come across everything from tepees to people
24 living in old buses, all of which end up being
25 included in the master list of people who can be

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1 included in the sample. If they live in anything
2 that they would call a home and they, in fact, have
3 a television set, then they have the ability to be
4 included in the sample.

5 Once this mapping has been done, there
6 is once again a very systematic approach to picking
7 the housing units that are ultimately selected, but
8 it's this multi-stage process.

9 The whole thing literally takes
10 thousands of work-hours and costs hundreds of
11 thousands of dollars. That process, if you just
12 simply think about the mapping alone, where we have
13 people going door-to-door, that that is done --
14 again, figuring 5,000 households as the ultimate
15 sample -- and each of those is coming out from a
16 group of about 200 homes, 200 times 5,000 is a
17 million that we, in fact, have actually been door-
18 to-door at a million households in order to set the
19 basics for ultimately the sample.

20 Q Is there any empirical validation that
21 the People-meter sample provides a scale model of
22 all United States television households?

23 A There are loads of things that can be
24 looked at, and people are continuously looking at
25 our sample, all of our clients, to make sure that

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1 it's in-balance, and most of the time it's looked at
2 in things like persons, demographics, and so on, all
3 kinds of characteristics within the homes. But one
4 example we like to use has to do with car ownership
5 because it has nothing to do with television. We'd
6 say, "Well, let's look at something completely
7 independent of anything we're measuring and see what
8 happens", so that we took a look at the car
9 registrations for people in the People-meter sample
10 versus known records that are out there, and that is
11 exhibited on page 6, the results of which, what you
12 find is that for the 14 makes, seven were right on
13 the nose in terms of the percentage, and the
14 remaining seven were extremely close, and that this
15 held even for some of the lesser known makes -- the
16 AMCs and the Lincolns, each of which are owned by
17 only a small percentage of the population, and the
18 smaller the percentage, the more likely that you're
19 going to find deviations between the results of the
20 survey and what the actual census-type data is, and
21 we felt quite good about this as a demonstration of
22 the sample itself.

23 Q Is the number of households the only
24 factor to be considered when judging the usefulness
25 of the sample size?

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1 A No, it's not. When you're dealing with
2 a panel like you are with the People-meter, there's
3 an additional factor that is extremely important
4 that it's understood, and it's very important
5 particularly for the way that the data that we're
6 showing is presented, and that is if you go out and
7 do a phone survey of 4,000 homes, it's very clearcut
8 -- you know, the 4,000 sample, you asked 4,000
9 people what they did and they told you.

10 In this case, because we're measuring
11 every 2.7 seconds and then building that up to a
12 minute to determine what the home was viewing during
13 a given minute, we are, in fact, measuring 4,000
14 homes every minute -- we're measuring 4,000 during
15 this minute, and 4,000 during the next minute -- and
16 that you can actually think about this as being
17 sampling points, or the equivalent of at minute one
18 you asked 4,000 what they watched, and at minute
19 2 -- so that if you go on and you have a 60-minute
20 program -- for example, and we were looking at
21 numbers nationally, so we assume about 3,500 homes
22 in-tab, or approximately 3500 that are actually used
23 in the calculations -- that you get 3500 homes times
24 60 minutes that, in effect, we are measuring 210,000
25 minutes in order to calculate out the ratings during

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1 that 60-minute block.

2 If you multiply this out times 24 hours
3 a day, seven days a week, that you actually get out
4 to a point of saying, "We are measuring
5 approximately 35,280,000 household minutes. At this
6 type of level, even a program that has, for example,
7 a .1 rating, which is an extremely tiny rating --
8 meaning a tenth of a percent of the households that
9 are watching at any given point in time -- it means
10 that we're still generating out 35,280 minutes of
11 viewing within those sample households, so that you
12 get very large, accumulated counts of household
13 minutes, which helps build the sample and helps
14 provide the stability.

15 I will note that it's important to
16 realize that obviously this 35 million is not the
17 equivalent of a 35 million independent sample size
18 because we are talking about a panel, but it does
19 show that, in fact, you are getting very large
20 magnitudes of information which, again, increases
21 stability and requires a great deal of viewing
22 within these households to, in fact, show measurable
23 ratings or to show changes in those ratings over
24 time.

25 Q How many of these household minutes were

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1 included in the study that is being presented here?

2 A The data that we're presenting are
3 distribution of the viewing to the 180 stations that
4 we found on a distant cable basis. In total, there
5 were close to 10 million minutes of viewing that we
6 based our distributions on.

7 Q Why, with that many minutes of viewing,
8 are the results for individual programs and
9 individual stations not reliable?

10 A It again is important to keep in mind
11 that that is the sort gross accumulation across the
12 180 stations that the individual stations, and
13 particularly individual programs when you're getting
14 down to that level, that you are going to be looking
15 at very small sample sizes of people who will have
16 the ability to view those stations and consequently
17 could, so that even on a gross basis, you're looking
18 at very large amounts of minutes. It again is an
19 issue of the sample size for many of the stations
20 would be inadequate to report on an individual
21 level.

22 Q Is the 1990 meter study that you're
23 presenting here based on a random sample of
24 stations?

25 A Yes, it is -- a form of random sample.

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1 Q Does that differ from the selection
2 process for stations included in the Nielsen diary-
3 based studies?

4 A Yes, it does.

5 Q What kind of a sample, random sample
6 selection methodology, was used for the metered-
7 study?

8 A We used a stratified random sample for
9 the stations within the study. There were two
10 strata that were established. I should step back
11 for a second.

12 We were provided with information that
13 indicated the number of homes which carried a given
14 station on a distant cable basis, so that we had a
15 complete list of all stations which had distant
16 carriage. From that, we developed the frame that
17 was used in order to select the stations.

18 When you're doing sampling, there are
19 two approaches that can be taken, one of which is to
20 do a complete random sample and just say, "Okay, we
21 have 754 stations, and we'll take them at random"
22 and, therefore, it becomes very straightforward.

23 The second way of doing sampling that
24 becomes much more effective in a lot of ways, is to
25 say that what you want to do is to put as much

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1 sample as you can against the either, in this case,
2 stations which, in fact, have the largest numbers of
3 distant cable subscribers, so that you can get the
4 most bang for your buck, which was the decision that
5 we had made in making our recommendation, so that we
6 created two strata: One of which was the top 50
7 stations in terms of the number of distant cable
8 subscribers, the second was all of the remaining.
9 The top 50 stations were selected with certainty,
10 meaning all of the top 50 were included in the
11 sample.

12 And what we did is we then subsampled
13 the remaining 704 on an every nth basis, meaning a
14 random selection procedure within the remaining
15 stations. The data was then weighted to reflect the
16 probability of selection.

17 Q What weights were assigned to each
18 sample station?

19 A The stations that were selected with
20 certainty, the top 50 stations, were assigned a
21 weight of 1. The remaining stations, there was a
22 sampling rate that was approximately 1-in-5, so that
23 your odds of being included in a sample were 1-in-5.
24 They, therefore, as a result, had a weight of
25 slightly more than 5 to reflect that, so that their

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1 information was weighted up to reflect the other
2 stations.

3 Q Can the viewing results by program
4 categories from your study, the meter-based study,
5 be projected to all stations carried as distant
6 signals in 1990?

7 A Yes, it can be, as long as the stations
8 were included in the frame and had a probability of
9 being selected into the sample, then the data itself
10 would be projectable to them as well.

11 Q How did Nielsen determine on a
12 geographic basis, what should be considered distant
13 or local?

14 A We were supplied with geography
15 definitions by the MPAA, to reflect the distant
16 definitions.

17 Q So, in other words, only those that were
18 considered distant to a particular station were
19 counted in the study?

20 A That's correct.

21 Q Where did Nielsen get the programming
22 definition for the different program categories
23 used?

24 A We received definitions on how to do the
25 categorizations from the MPAA.

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1 Q Could you briefly describe for us what
2 those categories were?

3 A Okay. You'll have to bear with me
4 because I'm going to read this one -- it will just
5 take a minute. I don't have this one completely
6 committed to memory. These are the rules that we
7 followed for the categorization. If you want to
8 follow along with me, it's on page 8.

9 First, any Nielsen identified PBS
10 station's programming was put in MPAA type 6 "Non-
11 commercial". So, if it was a PBS station, it went
12 into Non-Commercial, the programming.

13 Any program identified as a movie per TV
14 Data classification was put in MPAA type 2
15 "Syndicated series, specials and movies".

16 Programs classified as filler, To Be
17 Announced, and other such names, identified by TV
18 Data type 33 (filler), or by the name itself was
19 classified as type 5 "Other".

20 Programs identified as devotional by TV
21 Data or by Nielsen were classified as either MPAA
22 type 1 "Local", if the program was Local, or MPAA
23 type 3 "Devotional", if the program was syndicated.

24 Determination of Local or Syndicated was
25 based on source materials such as TV Data, ROSPs

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1 which is our own report on Syndicated programming,
2 the BIB books, TV Guide, et cetera. If a program
3 was aired on one station and was from a local
4 source, it was placed in MPAA type 1 "Local".
5 Programs known to be Local due to filing at the
6 Tribunal were verified for Local status. If a
7 program was not from a local source or was aired on
8 two or more stations, it was placed in MPAA type 2
9 "Syndicated series, specials and movies". Care was
10 taken to categorize programs airing on multiple
11 stations as Syndicated. Also, two programs of the
12 same name and different stations were carefully
13 reviewed for the possibility of being two different
14 programs.

15 Major League Sports and College
16 Basketball and Football are classified as MPAA type
17 4 "Sports". They were identified either by name or
18 by TV Data classification of Sports.

19 Q Did Nielsen aggregate the viewing data
20 by these different program categories?

21 A Yes, we did.

22 Q Could you tell us how you did that?

23 A What we did -- let me take a moment and
24 just explain on term, just to make sure that I'm not
25 confusing people when I use it, even though it's

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1 self-explanatory -- which is the term "time period",
2 which strictly refers to a period of time. In this
3 case, we refer to time periods on stations, we're
4 really talking about programming blocks, so that a
5 movie might be 8:00 to 10:00 on WPIX. There could
6 be a sporting event that might be on from 9:00 to
7 11:30. But there are blocks of times on stations.

8 And what we did when we did the
9 categorizations is that by running through the
10 lineup in the schedule on each program, we assigned
11 a categorization to a time period, so that we knew -
12 - all right, WPIX, from 8:00 to 10:00, falls into
13 Syndication.

14 And once that was done, we took all
15 these time periods and their categorization and, for
16 all intents and purposes, threw them into
17 "buckets" -- and said, "Okay, this is 8:00 to 10:00,
18 it goes into movies, and this is, again, WPIX, from
19 11:00 to 11:30, and that's Local, and that gets
20 thrown into that bucket".

21 And once we ended up having this list of
22 stations and time periods sorted for each of these
23 "buckets", we then went through and processed the
24 information which said: How much viewing do we have
25 to these stations and time periods in this bucket --

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1 and, therefore, kind of accumulated it, and the net
2 result coming out of the computer were the
3 aggregated results that you see.

4 Q So, the ultimate viewing comparison is
5 done on an aggregated basis of all these buckets
6 compared to each other?

7 A That's correct.

8 Q Did you do this on an individual program
9 basis?

10 A No, we did not.

11 Q Did you do this on an individual station
12 basis?

13 A No, we did not.

14 Q Did Nielsen prepare standard error and
15 relative error calculations for the results?

16 A Yes, we did.

17 MR. GARRETT: Madam Chairman, before we
18 go any further, the information the witness is
19 giving here about these "buckets", is that in his
20 written testimony someplace?

21 MR. LANE: Yes, it's on the bottom of
22 page 8, called Aggregation of Viewing Data.

23 MR. GARRETT: That's what he's just
24 referring to now?

25 MR. LANE: Well, I don't think the word

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1 "bucket" appears in there but, yes, that's what he
2 was just explaining.

3 MR. GARRETT: Okay.

4 CHAIRPERSON DAUB: Your reference to the
5 paragraph --

6 MR. LANE: In the second paragraph, "For
7 the meter data was compiled for each program
8 category showing all of the time periods for each
9 station during which programs of that type aired".

10 MR. GARRETT: And that's what he's just
11 explained?

12 MR. LANE: Yes, that's correct.

13 CHAIRPERSON DAUB: Mr. Lindstrom, how
14 would you verify in case you may have made a mistake
15 when you put them all in one bucket, if you ever
16 want to go back to be sure that there was no mix-up?

17 THE WITNESS: We have listings that
18 identify on a program-by-program basis and a
19 station-by-station basis, what bucket these programs
20 went into, so that those, in fact, can be verified.

21 Once the buckets have been defined --
22 you know, saying, all right, again, using the
23 example, here is PIX and this movie, and it's 8:00
24 to 10:00 and it goes into this bucket, the process
25 of selecting the viewing is an automatic one -- you

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1 know, the computer basically is going to do what
2 it's told, which is take the viewing from 8:00 to
3 10:00.

4 The area that is subject to
5 verification, really, is that classification, which
6 is which bucket did those go into, and that data is
7 available in terms of what the classifications were.

8 CHAIRPERSON DAUB: And they come from TV
9 Guide and other sources?

10 THE WITNESS: That's correct. We have
11 multiple sources that are available. As I said, a
12 number were used from the program lineups that we
13 received from stations, to TV Data, to our ROSP
14 reports, et cetera, so that we took into account as
15 much information as we could in doing the program
16 classifications.

17 BY MR. LANE:

18 Q I think I had asked you whether you had
19 performed a standard error and relative error
20 calculation?

21 A Yes, we did.

22 Q And were those done for aggregated
23 totals?

24 A Yes, they were.

25 Q And could you explain why they were done

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1 for the totals?

2 A The error range, or confidence level, of
3 the numbers are produced in order to give a user an
4 estimate of, again, how much confidence they can
5 have that a figure is going to fall within a certain
6 range around the estimate that you make.

7 In this case, the numbers that are being
8 looked at and used for purposes here are the
9 aggregated data, to say what percent of all these
10 minutes were viewed to Sports, or to Syndicated
11 programming and, therefore, it's the aggregated
12 information that you want to know how much
13 confidence you can have in that final result. So,
14 it's really only necessary to, in fact, look at the
15 confidence levels surrounding the built-up data that
16 you, in fact, are examining.

17 Q Could you tell us what the viewing
18 percentage results for the study were?

19 A Percentage results of the distribution
20 of the minutes were that the distribution of the
21 minutes viewed by households which were distant and
22 cable, for each station -- again, individually, it's
23 important to keep that in mind -- the distribution
24 of the minutes were 7 percent of the minutes were to
25 Local; 83 percent were to Syndicated series,

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1 specials or movies; 1 percent to Devotional; 6
2 percent to Sports; less than .5 percent to Other,
3 and 3 percent to Non-commercial.

4 Q And that's shown on page 10 of your
5 testimony, is it not?

6 A That's correct.

7 Q What were the -- you have shown on this
8 page, have you not, the standard error and relative
9 errors associated with these numbers?

10 A Yes, I have.

11 Q Now, you have chosen the 99 percent
12 confidence interval, have you not, for this standard
13 error and relative error?

14 A Yes, I did.

15 Q First of all, can you tell us what the
16 99 percent confidence level means?

17 A Okay. In a very broad stroke way, I
18 think what helps -- and it would be sort of nice to
19 have a picture, but -- there's a bell curve that's
20 created by estimates sort of looks like this
21 (indicating), that would be the distribution of what
22 you would expect. If you said, well, the real
23 number is 20 percent, and if you did a whole
24 thousand samples, then the results of you'd get,
25 most of the time, would be very close to that 20,

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1 and then you have kind of decreasing probability of
2 being further and further away, which is why it
3 reflects like this and gets very small and kind of
4 trails out.

5 What a standard error really is a
6 reflection of is sort of the chunk of space under
7 this bell curve. And what it means is, one standard
8 error generally reflects that 68 times out of 100,
9 or 68 percent of the time, your estimate will be
10 within the range of 1 standard error on this bell
11 curve. When you go out to 2 standard errors, you
12 have a 95 percent confidence, meaning 95 out of 100
13 times it will fall within this now somewhat wider
14 range of 2 standard errors. And as you can see, you
15 get some bang -- you get an additional 30 percent
16 when you add in this kind of little widening of the
17 range that you can feel confident in.

18 When you go out to 3 standard errors,
19 that will reflect that 99 percent of the time -- or
20 actually it's 995 out of 1,000 times -- that the
21 actual result will fall within 3 standard errors.
22 And, again, even though you're adding a whole
23 standard error -- meaning you're going from 2 to 3,
24 you're broadening your range really by 50 percent --
25 you only add 4 percent more confidence to that

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1 number because there are so few people that are out
2 on that far end. There is such a -- really, only 4
3 percent of the time they're going to be in that last
4 part.

5 I used the 99 percentile simply to get
6 the most confidence you could have in terms of an
7 estimate that it would fall within the ranges that I
8 showed on this table. As I noted on here, I think
9 what's generally traditionally used by statisticians
10 when they're doing analysis is 2 standard errors,
11 which would reflect a 95 percent confidence, and
12 that actually what you would find if you were to do
13 that for these figures is that, again, if you think
14 about this bell curve -- I don't know if I'm making
15 this too simple or not -- but that instead of being
16 3 standards and being this wide, you're now 2
17 standard errors and you're only this wide, which
18 means that actually the range around those numbers
19 would be smaller.

20 And using an example of the MPAA
21 figures, that you would end up putting a high on the
22 range of about 84.5 and a low of 81.5, if you were
23 to choose to use a 95 percent confidence level. So,
24 again, it's just making sure to understand that
25 principle that, in fact, you're increasing your

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1 confidence and increasing the range. And, so, as
2 you sort of decrease slightly the confidence levels
3 and the numbers, then you of course are decreasing
4 the range that you are looking at.

5 Q So, Mr. Lindstrom, if I could just refer
6 you to page 10, the range that you're talking about
7 is that second section of numbers there that starts
8 in the left-hand column as high and low, is that
9 correct?

10 A That's correct.

11 Q And just staying with the Syndicated
12 programming numbers, at 99.5 percent confidence
13 level, what Nielsen is stating is that the viewing
14 in 1990 was between 85.2 and 80.8 percent, is that
15 correct?

16 A That's correct, of the distant viewing
17 to those hundred -- well, actually, to the 754
18 stations.

19 Q And what you've just said about the 95
20 percent confidence interval was if we had wanted --
21 if you had used 95 percent confidence interval, the
22 high number, instead of being 95.2, would be 84.5,
23 is that correct?

24 A That's correct.

25 Q And the low number, instead of being

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1 80.8, would be 81.5, correct?

2 A That's correct.

3 Q And if we did similar calculations for
4 the other categories, the range at the 95 percent
5 confidence interval, we would get similarly smaller
6 ranges, would we not?

7 A That's correct.

8 MR. LANE: Those are all the questions
9 that I have on direct, Madam Chairman.

10 CHAIRPERSON DAUB: Thank you, Mr. Lane.
11 Would you like to go into cross?

12 COMMISSIONER GOODMAN: Probably not.

13 COMMISSIONER DAMICH: Probably not.

14 COMMISSIONER GOODMAN: I'd like to ask
15 Mr. Garrett a question. I think we've indicated
16 that we intend to take a break in approximately ten
17 minutes. Would you like to stand up and ask a
18 question?

19 MR. GARRETT: I'd only get one answer.

20 (Laughter.)

21 I'm happy to do whatever is more
22 convenient for the Tribunal. I can start now or
23 start after lunch.

24 CHAIRPERSON DAUB: We can go ahead and
25 start.

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1 COMMISSIONER GOODMAN: May I ask one
2 brief question before we do that. In describing
3 rating, in discussing the situation before us, are
4 you using a universe of cable TV households or
5 television households?

6 THE WITNESS: We are only including
7 homes that were cable and distant, based on the
8 geographic definitions for each station. So, the
9 only households that could be included in here were,
10 in fact, cable homes.

11 COMMISSIONER GOODMAN: Thank you.

12 CHAIRPERSON DAUB: Commissioner Damich?

13 COMMISSIONER DAMICH: No questions.

14 CHAIRPERSON DAUB: A quick question.
15 Are there only 29 meter markets across the nation
16 that you use?

17 THE WITNESS: That is correct. Again,
18 it is important to keep in mind that -- and I may
19 have been unclear in the course of this, just to
20 make sure that it's understood -- the metered
21 markets are a completely separate service. In some
22 ways, the comments on the metered markets are more a
23 reflection of kind of the scope of what Nielsen is
24 doing, and saying that, in fact, meters are good and
25 recognized as a solid methodology, and are accepted

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1 not only nationally, but on a local basis. But we,
2 in fact, are not using the metered markets in this
3 sample.

4 This is strictly based upon the national
5 People-meter sample, the one that is used again for
6 everything from the rankings on Entertainment
7 Tonight or everything else, all of the national
8 measurements that are being done.

9 CHAIRPERSON DAUB: You used in this
10 proceeding, People-based meter.

11 THE WITNESS: Again, let me make sure
12 that it's clear because it's an important
13 distinction. The device itself is called the
14 People-meter, and it does collect information on all
15 of the people within the home, and does require them
16 to push buttons, et cetera, and, admittedly, through
17 the years, various people have complained about
18 whether or not people are pushing their buttons, and
19 whether the right people are pushing them, and all
20 the other questions that go on regarding People-
21 meters.

22 But the reality is that there is a
23 portion of that -- which is why I tried to separate
24 this out in the beginning -- there is a portion that
25 is strictly measuring what the household is doing,

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1 and it's a completely passive device. It just
2 monitors what set it's tuned to, what channel the
3 converter is on, whether the TV is on, et cetera --
4 all of the basic information on the viewing of the
5 household. This is all entirely passive and has
6 nothing to do with the people in it, and it is
7 actually only the passive meter data that we are
8 using for this study.

9 CHAIRPERSON DAUB: What is the
10 difference between that mechanism, to station-based?

11 THE WITNESS: I'm not sure I understand
12 the question -- if you could clarify.

13 CHAIRPERSON DAUB: I may be totally
14 wrong. I was under the impression there is a
15 mechanism that the station can control. Am I
16 totally off?

17 THE WITNESS: I think I know what you're
18 talking about and I'll just explain it briefly, as
19 long as we have a few minutes before the break.
20 There is a device that's called AMOL, and it's the
21 automatic management of lineups, and it is equipment
22 that is placed at the broadcast networks and a
23 variety of syndicators as well, that actually places
24 a code on the television signal as it goes out of
25 the station, or as it is fed out by the broadcast

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1 networks, and we have electronic equipment in each
2 market around the country that's reading the station
3 itself, to sort of pick up these codes. And the
4 reason why that's done is to make sure that, in
5 fact, just because CBS sends out a program that's
6 supposed to go on at 8:00 o'clock, it doesn't mean
7 that the CBS affiliate will necessarily air it, and
8 we can, in fact, identify then when an affiliate is
9 airing programming that's not coded and, therefore,
10 shouldn't be included in the program ratings, as
11 well as, in many cases, if they're substituting
12 Syndicated programming, we can identify what the
13 substitution is, et cetera.

14 And the reason for this is that our
15 service is an overnight service, so that we need to
16 generate out ratings for the networks and for others
17 literally within 24 hours, so that if there are
18 program substitutions that were to occur -- or an
19 even better example is football games. Football
20 games cause havoc because there are regional games
21 and they have all kinds of different lengths to
22 them, and it throws everybody -- all their schedules
23 in all kinds of crazy ways. But it is a clear way
24 of being able to identify what programs were
25 actually being aired so that, in fact, the TV

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1 ratings can be generated on an overnight basis, and
2 we don't have to wait in order to do station lineups
3 to make sure of all the airings.

4 So, I think that that might be it
5 because that part of it is, in fact, controlled by
6 the programming source that sends it out, but it's
7 just another piece to our database in compiling
8 those ratings.

9 CHAIRPERSON DAUB: Thank you. Any
10 questions?

11 (No response.)

12 Without any objection, we will close for
13 --

14 MR. LANE: Madam Chairman, could I ask a
15 question? I was unclear exactly what your ruling
16 this morning about one counsel to do cross-
17 examination. Does that mean --

18 CHAIRPERSON DAUB: The lead counsel from
19 the opposing parties.

20 MR. LANE: I guess then I'm unclear what
21 is an opposing party? I think this is very
22 important for this case because I can tell all the
23 people on that side of the room are opposing Mr.
24 Lindstrom. I don't know whether you meant only one
25 counsel for all those parties, or one counsel for --

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1 CHAIRPERSON DAUB: One counsel per
2 claimant, for an individual claimant. Does that
3 clarify?

4 MR. LANE: (Nodding head.)

5 CHAIRPERSON DAUB: Thank you all. We
6 will break for lunch, and we will return at 1:30.

7 (Discussion off the record.)

8 CHAIRPERSON DAUB: We're back on the
9 record.

10 MR. LANE: Madam Chairman, I would like
11 to ask a question of the Tribunal concerning time.
12 One of the things that is, I think, readily apparent
13 from the written testimony is that, in effect, we
14 are being opposed by all the other parties,
15 particularly as regards to Mr. Lindstrom and Mr.
16 Besen's testimony. And under your last
17 clarification, you've indicated that each of the
18 parties has the right to cross-examine.

19 I have no objection to that. That has
20 been the way it has always been at the Tribunal and
21 I support that fully. The reason for my request for
22 a clarification comes from practices in other
23 agencies -- for example, at the Court of Appeals,
24 most Courts of Appeals -- that given time
25 constraints, where there are several parties who

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1 have, in effect, a joint interest, only one counsel
2 may speak for all those parties. And in the
3 interest of time alone -- which, as you know, I have
4 asked you to reconsider because I believe there is
5 just simply not enough time to conduct this hearing
6 given the number of witnesses, so I am not trying to
7 constrain the time -- I would prefer that we have
8 not nine days in September, but many more days, many
9 more days in October, as many days as it takes, but
10 if we don't, I would at least ask you to consider
11 whether, as a time limitation, parties that have a
12 joint position have only one counsel to speak for
13 them.

14 CHAIRPERSON DAUB: Thank you, Mr. Lane.
15 Mr. Garrett?

16 MR. GARRETT: Madam Chairman, a number
17 of the parties may have a joint interest in
18 believing that certain evidence and certain
19 positions taken by the MPAA are incorrect and should
20 not be adopted by the Tribunal. The fact of the
21 matter is that each of us here represents their own
22 set of clients, with their own set of interests.

23 We also are competing among each other
24 for a share of a finite pie here. Each of us wants
25 to get the larger share for our clients and, to that

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1 extent, we have interests that are not entirely
2 coincidental here.

3 Now, I certainly support any type of a
4 procedure here that would limit the parties from
5 engaging in repetitious cross-examination,
6 duplicative cross-examination, unnecessary cross-
7 examination, and I think the Tribunal historically
8 has been vigilant in ensuring that we don't run up
9 our time here doing things that are needlessly
10 duplicative. But on the other hand, I would oppose
11 artificial limitations of the type that I believe
12 Mr. Lane is suggesting. In light of the fact that
13 we do have distinct interests among our clients and
14 we have to protect those in the course of our cross-
15 examination, I cannot rely upon counsel from other
16 parties to ensure that the Sports interests get the
17 share that they seek.

18 CHAIRPERSON DAUB: Any other comments,
19 Mr. Hester?

20 MR. HESTER: I would simply comment that
21 especially as to PBS, I think it's quite apparent
22 that there are special issues that affect the kind
23 of cross-examination PBS might want to pursue in
24 relation to various studies. A number of these
25 witnesses have conducted their studies in different

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1 ways as to PBS in comparison to any of the other
2 parties. And, so, it seems clear to me that we
3 ought to have the opportunity to examine on matters
4 that are of particular relevance to PBS.

5 We would certainly undertake not to
6 duplicate cross-examination conducted by other
7 counsel, but I think that's inherent in the process,
8 and it certainly wouldn't be appropriate to preclude
9 us from pursuing our own lines of cross-
10 examination.

11 I would also add, it would be quite a
12 surprise for us to learn just today that such a
13 limitation would be imposed on counsel because
14 certainly we haven't had the opportunity to prepare
15 among ourselves in any such fashion for this
16 hearing. We have all been preparing independently.

17 CHAIRPERSON DAUB: Thank you very much,
18 Mr. Hester. Mr. Stewart?

19 MR. STEWART: Yes. We don't, I think,
20 have a joint position here, the parties other than
21 MPAA, and I think Dennis has acknowledged that fact.
22 We all have distinct interests and distinct
23 perspectives on all of the evidence he is going to
24 put in.

25 I think it is premature for him to raise

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1 this issue now. We have consumed an hour with
2 direct, a little bit more than an hour with direct
3 examination. Some of the parties propose that we
4 forego that in order to condense the hearings a bit.
5 I think that we all have a responsibility to
6 minimize duplicative or unnecessary cross-
7 examination, and I will endeavor to do so.

8 I think maybe at some later point in the
9 proceeding, if Dennis thinks that that's not the way
10 it's happening, then he may raise that objection
11 again and we can address it then.

12 CHAIRPERSON DAUB: Thank you, Mr.
13 Stewart. Mr. Gottfried?

14 MR. GOTTFRIED: We share the concern
15 about duplicative testimony. We think that in past
16 years we haven't wasted the Tribunal's time, we've
17 focused on our own interests, and we invite you
18 please to tell us, a sua sponte objection, if you
19 think we're going over territory that you've already
20 heard and are wasting your time, and we'll attempt
21 to --

22 COMMISSIONER GOODMAN: I think you are
23 now.

24 (Laughter.)

25 MR. GARRETT: He just wants to be told,

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1 that's all.

2 CHAIRPERSON DAUB: Mr. Lane?

3 MR. LANE: I want to make it clear why
4 I'm raising this point right now, because if you
5 have a finite number of hearing days and you allow
6 the parties to cross all my witnesses and consume a
7 large portion of that time, and then you say to me,
8 "You are restricted on your cross because we don't
9 have enough days", I am going to raise that as an
10 error and as being totally unfair to me.

11 We have said in our papers that we want
12 more time. I believe we need more time. I am not
13 objecting to anybody asking as many questions as
14 they want. But I want it known immediately when the
15 hearing starts that if you give us a finite number
16 of days and then, as Mr. Stewart says, well, let's
17 revisit it -- yeah, I know when we're going to
18 revisit it -- right after Program Suppliers' case
19 ends -- and then he says, "Well, we've still got 18
20 witnesses and we have seven days, when we had nine
21 days for my witnesses", and that's going to be very,
22 very unfair, and that's what I want to prevent.

23 CHAIRPERSON DAUB: We take note of your
24 comment. You have always gotten along so well, so I
25 do predict that there will be an amicable

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1 atmosphere, and we will come back at 1:30 and we
2 will make a brief comment on the issues that you
3 have raised. Thank you very much.

4 (Whereupon, at 11:57 a.m., the luncheon
5 recess was taken.)
6

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A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

(1:40 p.m.)

CHAIRMAN DAUB: With regards to the issue that Mr. Lane has raised prior to lunch today, the Tribunal will afford to all parties time to cross-examine. And, Mr. Lane, you will be assured to have an adequate amount of time to cross the witnesses.

MR. LANE: Thank you, ma'am.

CHAIRMAN DAUB: Thank you.

MR. LANE: Could I just raise one point with Mr. Lindstrom? PBS has asked us some questions concerning the number of cable households in the peplemeter study, and we provided them some of the answers this morning.

Mr. Lindstrom was able to provide an additional answer during the lunch break. And I would just ask if he would state that for the record, if that's agreeable.

COMMISSIONER GOODMAN: Can you repeat your request again?

MR. LANE: Yes. PBS had asked us a question about the certain characteristics of the peplemeter sample households. In particular, the question I'd like to ask him is: How many of the

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1 sample households were -- I don't know exactly what
2 the question is.

3 That's why I'm just going to tell him to
4 give me the answer, but something about Public
5 Television, people watching Public Television
6 stations of the 4,000 peoplemeter sample.

7 COMMISSIONER GOODMAN: Fine.

8 Whereupon,

9 PAUL LINDSTROM
10 was recalled as a witness by counsel for MPAA and,
11 having been previously duly sworn, resumed the
12 witness stand, was further examined and testified
13 further as follows:

14 FURTHER DIRECT EXAMINATION

15 BY MR. LANE:

16 Q So would you give us that answer, Mr.
17 Lindstrom?

18 A Okay. In total, -- and this was a
19 number that we had previously supplied -- there were
20 3,671 households which watched some distant cable
21 viewing to one of the 180 stations.

22 And we had been requested to get the
23 number that had viewed PBS, and there were 286 that
24 had viewed on a distant cable basis some of the PBS
25 stations in the 180 sample.

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1 CHAIRMAN DAUB: Thank you.

2 Does that answer your questions, Mr.
3 Hester?

4 MR. HESTER: Yes, although I would say
5 for the record I don't think that is all of the
6 discovery that is outstanding on the question of the
7 attributes of the peoplemeter households.

8 The Tribunal this morning has granted
9 our motion to compel on a number of items in
10 relation to the attributes of the peoplemeters and
11 the peoplemeter households.

12 This piece of information is one of the
13 items included within that discovery we had sought,
14 but it's not the only. I just wanted to make that
15 clear. I presume that's understood.

16 We are still awaiting further discovery
17 from the attributes of the peoplemeter households.

18 CHAIRMAN DAUB: Yes. Mr. Lane, is your
19 witness prepared to provide that addition right now
20 or does he need to --

21 MR. LANE: Well, I'm not quite sure what
22 all of the open issues are. Part of it we discussed
23 this morning will be the subject of a motion for
24 reconsideration; that is, the station and the
25 individual program data.

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1 Also there is a request from PBS as to
2 the location of each county in which peoplemeter
3 households are located and how many would be in that
4 county.

5 And I could ask Mr. Lindstrom to
6 explain, but that information will not be provided
7 because of confidentiality. If you would like, he
8 could address that or I could just go on and discuss
9 it.

10 CHAIRMAN DAUB: Could Mr. Hester --

11 MR. LANE: No. This is not -- maybe I'm
12 confusing. There is absolutely no question that the
13 local distant county distinction has -- that
14 information has already been provided.

15 My understanding of what PBS has asked
16 is that they be told in what counties these 4,000
17 peoplemeter households are located and how many
18 households are located in each county.

19 This is all across the United States,
20 and that is confidential information that is not
21 provided, will not be provided. And Mr. Lindstrom
22 can either explain the reasons for that or that
23 would be part of our motion for reconsideration.

24 COMMISSIONER GOODMAN: I would like to
25 hear Mr. Lindstrom explain the reason for that.

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1 THE WITNESS: Okay. It's important to
2 keep in mind two things, one of which when we're
3 dealing with the peoplemeter database, we're dealing
4 with a syndicated service, meaning there are
5 multiple clients and it is a panel. So that the
6 same homes are being used continuously and over
7 time.

8 It's also important to keep in mind, as
9 identified earlier, that there are billions of
10 dollars that, in fact, ride on the results that come
11 out from the service.

12 There are extremely good reasons, I
13 believe, that it's important that people don't know
14 the location of these homes or who they are. And we
15 have to go to extraordinary steps to do that, to the
16 point where if people are questioned who are in the
17 sample, they are supposed to let us know if people
18 have asked if they're involved with the homes.

19 We, in fact, will kick people out of the
20 sample if we think that they're telling people that
21 they're in the sample. I mean anything that would
22 allow someone to get an idea of where those homes
23 are.

24 And, obviously, that becomes very key.
25 And that's kind of clear-cut. If people knew where

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1 those homes were, then they could make attempts to
2 influence them.

3 The reality is that it isn't necessary
4 to know the exact location of a household or who
5 they are in order to influence them. Using the
6 example of the counties in order to try and make the
7 point, it is true that there will, in fact, not be
8 sample homes in every county in the United States.
9 There's not because we subsample the counties in
10 order to pick the original sample.

11 If somebody wanted to go out and try and
12 advertise, say, in order to push a program, if the
13 locations in the counties were available, it would
14 be extremely easy to simply target your advertising
15 into the counties where the locations of the homes
16 are in order to make a much more effective pitch, in
17 order to raise the ratings, the idea being that to
18 some extent, -- and this is going to sound funny,
19 but it's true -- that it doesn't matter so much
20 whether everyone in the United States is watching
21 David Letterman so much as what counts that, in
22 fact, the people in the Nielsen sample are because
23 that is the benchmark.

24 And, using that type of logic, if there
25 is any way of targeting, target marketing, Nielsen

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1 homes, then, in fact, people are likely to attempt
2 to do that. And, as a result, we have to do
3 everything that we can in order to make sure that
4 that can't be done.

5 Under the present fashion of keeping
6 everything about where those homes are located as
7 confidential as we possibly can, we avoid anyone
8 trying to do undue influence on the sample outside
9 of what would be happening across the United States
10 anyway. And it is very key to the integrity of the
11 sample and the results that that be true.

12 And, as a result, it is not something
13 that we could provide as to which counties have
14 homes and how many and which counties do not.

15 CHAIRMAN DAUB: Mr. Hester?

16 MR. HESTER: Let me make a couple of
17 points, if I might. First, as I understand the
18 Tribunal's ruling this morning, the motion to compel
19 this information has been granted at this point.

20 And, specifically, one of the four
21 points that we asked for in relation to the
22 peoplemeter households was the locations by county
23 of those households and the number of peoplemeter
24 households found in each such county. So there is
25 an order at this point granting the discovery.

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1 There's a very good reason why we need
2 this sort of information. The peplemeter study is
3 purporting to measure distant signal viewing. And,
4 of course, especially for somebody like PBS, the
5 distant signal viewing is not nationwide.

6 We're talking about distant signal
7 viewing around a radius within some rough dimension
8 of a home base for a Public Television station. So
9 it becomes quite important to know where those
10 counties are located.

11 Are there any peplemeters located
12 around the stations for Public Television that have
13 been included in this peplemeter sample? There's
14 no way to evaluate the validity of these results
15 unless we have some indication as to how these
16 counties where the peplemeter households are found
17 relate to the stations that were chosen for this
18 study.

19 Now, it seems to me that Nielsen and the
20 MPAA have injected this issue into the proceeding.
21 Nielsen took its choice. It has come forward to
22 purport to decide the rights of different parties by
23 offering this sort of a study. And once that choice
24 has been made, it's too late for them to say that
25 certain critical elements of the study methodology

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1 and design are confidential.

2 Now, there are all sorts of ways to
3 protect the confidentiality of the information. It
4 can be limited to outside counsel. That's the most
5 obvious.

6 I can't imagine any of us are going to
7 go into the survey business. You see much more
8 sensitive information than this provided to outside
9 counsel and all sorts of litigation.

10 That's what protective orders are for,
11 but it can't be the answer to say that the
12 information is too sensitive. Yet, at the same
13 time, they're asking this Tribunal to allocate large
14 amounts of money in reliance on this study
15 methodology.

16 We submit that it's a critical aspect of
17 the entire peoplemeter study to know how these
18 households relate to the stations they included in
19 their sample.

20 So that's why we would submit that the
21 Tribunal correctly decided to compel this discovery,
22 and we would ask that it be provided.

23 CHAIRMAN DAUB: Thank you, Mr. Hester.

24 In light of what Mr. Lindstrom had
25 stated, perhaps the Commission, without objection

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1 from my colleagues, would like to take some minute
2 to discuss this matter unless you want to proceed
3 and let Mr. Hester -- you have received, in fact,
4 some of the information.

5 And the remaining points in your
6 original motion are not answered. And, as a result
7 of what Mr. Lindstrom had said, perhaps the Tribunal
8 would like to revisit.

9 If my colleagues have any -- if you
10 would like to shed some light on this --

11 COMMISSIONER DAMICH: Well, what I'm
12 inclined to do at this point is to let Mr. Lane
13 respond to our order compelling the production of
14 documents and information and then insofar as he
15 doesn't produce it, then have that reported back to
16 us.

17 I think our understanding, if not in the
18 order, at least implicit in it, since we don't have
19 subpoena power, would be then to take into
20 consideration the excuse made by Mr. Lane and then
21 apply it to the weight of the evidence.

22 CHAIRMAN DAUB: Commissioner?

23 COMMISSIONER GOODMAN: I agree with
24 everything that Commissioner Damich said with this
25 addition or this clarification, and that is that I

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1 think that would solve another problem, which is
2 that I'm not certain right now the degree to which
3 MPAA is going to comply with PBS' request. It's
4 possible that there may be another element of that
5 request that Nielsen is unable to comply with.

6 Instead of taking these issues in an
7 irregular fashion, I think I would rather see the
8 response from Mr. Lane and have a brief argument at
9 that time. Then we would make our determination on
10 each of those outstanding issues.

11 CHAIRMAN DAUB: All right. Fine.

12 MR. LANE: I'll get something in as
13 quickly as possible.

14 CHAIRMAN DAUB: Thank you, Mr. Lane.

15 At this time, any other matters you
16 would like to discuss before Mr. Garrett?

17 (No response.)

18 CHAIRMAN DAUB: It's your turn, Mr.
19 Garrett, to cross Mr. Lindstrom.

20 MR. GARRETT: Thank you, Madam Chairman.
21 I have just one preliminary matter to raise with the
22 Tribunal. As a condition to granting the Joint
23 Sports Claimants access to certain data for five
24 different programs, Nielsen requests that we agree
25 to enter into a confidentiality agreement with

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1 respect to that data.

2 I have circulated copies of that
3 confidentiality agreement to the Tribunal and to the
4 parties, and I have also provided a copy to the
5 Court Reporter to be marked as Sports Exhibit 1-X.

6 (Whereupon, the aforementioned
7 document was marked for
8 identification as Joint Sports
9 Claimants Exhibit Number 1-X.)

10 MR. GARRETT: The confidentiality
11 agreement imposes certain limitations on what we;
12 that is, the Joint Sports Claimants, may do with
13 that data in proceedings before the Tribunal.

14 The letter itself spells out what the
15 conditions are, but, very broadly, it requires us to
16 keep that data confidential. We can use it to
17 cross-examine Mr. Lindstrom, which is what I intend
18 to do, but that a portion of the transcript that
19 deals with that data will have to be kept under
20 seal, as will any exhibits containing that data that
21 I would request to have entered into the record
22 here.

23 It also requires that all counsel as
24 well as the Tribunal agree to this procedure of
25 keeping the data confidential. My understanding is

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1 that I will be permitted to provide the data, the
2 exhibits that include the data, as well as portions
3 of the transcript that deal with that data to all of
4 the parties' counsel in this proceeding, but that
5 they will then be restricted from further
6 disseminating that information.

7 Again, it's all spelled out in what is
8 now marked as Sports Exhibit 1-X.

9 CHAIRMAN DAUB: Is that this letter?

10 MR. GARRETT: Madam Chairman, the
11 document that you are holding up now is indeed the
12 one that I am referring to as Exhibit 1-X.

13 CHAIRMAN DAUB: Thank you. That request
14 will be granted.

15 (Whereupon, the aforementioned
16 document, having previously
17 been marked for identification
18 as Joint Sports Claimants
19 Exhibit Number 1-X, was
20 received in evidence.)

21 CHAIRMAN DAUB: I take it that you did
22 get agreement from all counsel.

23 MR. GARRETT: It is my understanding
24 that all counsel have agreed to the conditions that
25 are outlined in that letter concerning the

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1 disclosure of the Nielsen data.

2 COMMISSIONER DAMICH: I have a question.
3 What about members of the general public, which had
4 come in during the cross-examination?

5 MR. GARRETT: I'm sorry. I can't hear
6 you.

7 COMMISSIONER DAMICH: Are you going to
8 actually have someone on the stand that is going to
9 discuss this or is this going to be purely written
10 and used as a basis for questions?

11 MR. GARRETT: Well, at this point, the
12 data that have been provided to me by Nielsen simply
13 on the basis of my cross-examination of Mr.
14 Lindstrom. Should I or anyone else want to make
15 further use of that data in some other way in this
16 proceeding, it would have to be in accordance with
17 that confidentiality agreement.

18 COMMISSIONER DAMICH: So in the process
19 of Mr. Lindstrom's answering questions, he may
20 reveal some of this information?

21 MR. GARRETT: It is certainly possible.
22 And to the extent that he verifies data he has
23 provided to me, he will, in fact, be discussing the
24 very data that Nielsen has asked to keep
25 confidential.

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1 COMMISSIONER DAMICH: Is there a
2 problem, then, with members of the general public
3 attending our hearing?

4 MR. GARRETT: Well, I would have to ask
5 Mr. Lindstrom and Mr. Lane to answer that question.
6 I certainly have no problems.

7 THE WITNESS: I would clarify to say
8 that as best as I can tell how Mr. Garrett is likely
9 to use the data, I do not see a problem with the
10 public attending.

11 It is the aggregate database that we
12 are, in fact, providing to him that could be taken
13 out of public record and used for other purposes
14 that we would not want to happen. It is clearly too
15 large a database for somebody to recite verbally and
16 take down notes from in order to use.

17 So that I think the answer to it is no,
18 I don't see a reason to bar the public because of
19 this.

20 CHAIRMAN DAUB: Thank you.

21 Mr. Koenigsberg?

22 MR. GARRETT: Well, Madam Chairman,
23 might I just add that certainly Mr. Lindstrom is at
24 a bit of a disadvantage right now because he does
25 not know what precisely I'm going to be putting into

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1 the record, nor what he's going to be questioned on.

2 But I would make the request that if
3 after the cross-examination Nielsen determines that
4 information that has been discussed during the
5 hearing and that has been put into the record, in
6 fact, does not need a confidential treatment, that
7 they would so advise the Tribunal because it would
8 certainly ease the handling of the record here as we
9 move along.

10 CHAIRMAN DAUB: Thank you, Mr. Garrett.

11 Mr. Koenigsberg?

12 MR. KOENIGSBERG: Yes. Thank you, Madam
13 Chairman. I just want to be clear for the record.
14 As we have settled, Music has settled, out of this
15 proceeding, we were not a party to this
16 confidentiality agreement.

17 I wanted to make that point before, but
18 Commissioner Damich's question and Mr. Lindstrom's
19 answer take away any fear that I had that our
20 sitting here would be a problem.

21 And I also think it's fair to say that
22 not even having seen the confidentiality agreement,
23 but hearing Mr. Garrett's description of it, we
24 would certainly be willing, as counsel for the
25 parties, to be bound to it as well.

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1 CHAIRMAN DAUB: Thank you.

2 Any other preliminary matters?

3 (No response.)

4 CHAIRMAN DAUB: Mr. Garrett, you're on
5 for cross.

6 MR. GARRETT: Thank you, Madam Chairman.

7 Mr. Lindstrom, I'm Bob Garrett, and I
8 represent the Joint Sports Claimants in this
9 proceeding.

10 CROSS-EXAMINATION

11 BY MR. GARRETT:

12 Q Mr. Lindstrom, at the outset of today's
13 session, this afternoon's session, you mentioned
14 that there were 3,671 NTI peoplemeter households
15 that reported some viewing, distant signal viewing,
16 in 1990. Is that correct?

17 A In the four months included in the
18 study, that is correct.

19 Q Your NTI peoplemeter sample consists of
20 4,000 households. Is that correct?

21 A It consists of an average-day installed
22 sample of 4,000 homes. The actual number of
23 households that will be installed at any point in
24 time throughout the -- or will have been installed
25 at one point in time throughout that year is

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1 substantially higher.

2 We turn over homes on an every-two-year
3 basis. It's the maximum length of time that anyone
4 can remain in the sample. So just using that logic,
5 every year you will turn over 2,000 homes, meaning
6 that, in theory in very broad-stroke numbers, you
7 should have approximately 6,000 homes or so that
8 will, in fact, have had the potential to contribute
9 during the course of a year on a cumulative basis.

10 Q At any give point in time, however, we
11 would find approximately 4,000 households that are
12 attached to the peplemeter. Is that correct?

13 A That is correct.

14 Q And of those 4,000 households, how many
15 are cable households?

16 A There are somewhat more than 2,000. We
17 have supplied the exact counts for 1990. I don't
18 have them at my fingertips.

19 Q In 1990 approximately 60 percent of the
20 nation subscribed to cable television. Is that not
21 correct?

22 A That is correct.

23 Q One would expect, then, that in your
24 sample of 4,000, one would find only approximately
25 2,400 households wired for cable at any given time?

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1 A Actually, just let me take a check
2 because, actually, I do know that the percentages
3 are right around 60 percent, range from 60 to 61
4 percent for each quarter.

5 MR. LANE: Madam Chairman, if counsel
6 will allow me, I could supply this information that
7 Mr. Lindstrom gave me yesterday.

8 CHAIRMAN DAUB: Mr. Garrett?

9 MR. GARRETT: I have no objection.

10 THE WITNESS: Okay. The exact number of
11 homes -- and I'll read this quarter by quarter
12 because it varies in terms of the average-day
13 installed sample.

14 The average-day cable installed sample
15 in the percentage was: for the first quarter of
16 1990, it was 4,034 homes installed, 2,447 cable
17 homes; -- that's 60.7 percent -- second quarter,
18 4,084 installed, 2,495 cable, 61.1 percent; third
19 quarter, 4,081 installed, 2,504 cable, 61.4 percent;
20 and fourth quarter was 4,074 total, cable 2,513, and
21 61.8 percent.

22 BY MR. GARRETT:

23 Q Mr. Lindstrom, in your written testimony
24 and your oral testimony today, there are a number of
25 references to a 4,000 figure, are there not?

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1 A Yes, there are.

2 Q And that, as I understood it when I read
3 the testimony initially, was the number of
4 households that had actually participated in the
5 results of your metered viewing study. I take it
6 that reading is not correct?

7 A Because the sample sizes will vary as
8 homes are installed or turned over, we generally
9 refer to it as the target level for what we're
10 shooting for. And the target level for the
11 peplemeter sample is approximately 4,000 homes
12 installed on any given day. So it is the easiest
13 approximation.

14 Q And on any given day, however,
15 approximately 24 to 25 hundred of those will be
16 cable households; correct?

17 A That is correct.

18 Q And the data that you have provided to
19 the Tribunal represents data obtained only from
20 those cable households. Is that not correct?

21 A That is correct.

22 Q So that as we go through and make
23 various calculations using the data that you
24 provided, the correct number really ought to be 24
25 to 25 hundred, as opposed to 4,000, households;

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1 correct?

2 A Actually, the best number -- and, again,
3 I have to make a minor correction because I was
4 using it off the top of my head. And I see again
5 with the information I had supplied, it wasn't 3,671
6 homes that provided some viewing. It was 3,657,
7 just to make sure that the record was correct.

8 It is true that the number for any
9 individual day or any individual program on an
10 individual day would be based off of the 2,500
11 households that were there for that point in time.

12 It is important to keep in mind that it
13 is the aggregate figures that are really important
14 in this case. And, actually, the most key number is
15 the 3,657.

16 Q Some of those households, however, may
17 have been part of the sample for only a couple of
18 days, a week; correct?

19 A That is correct. It could happen for
20 two reasons, just to make sure that it is clear.
21 One reason could be that somebody is newly into the
22 sample and, therefore -- or had just been turned out
23 -- would have been turned out in the early part of
24 '90 or freshly coming in.

25 The second thing that can happen is

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1 that, in fact, you will have people who will sign up
2 for cable and drop it. And so that you will always
3 have a great deal of dynamics in the universe when
4 you're trying to deal with cable homes over time
5 because you don't want to restrict it to just people
6 who have had cable throughout all of 1990. Those
7 are very different than the people who would be
8 adding and dropping.

9 So that it's important to take that
10 dynamics into account.

11 Q Mr. Lindstrom, as I understand your
12 study, these 3,600 households recorded a total of
13 approximately 10 million viewing minutes to
14 non-network distant signal programming during the
15 four sweep periods in 1990. Is that correct?

16 A Among the 180 stations, that's correct.

17 Q But you are projecting the results of
18 those 180 stations to all stations carried on a
19 distant signal basis. Is that not correct?

20 A The fact that we're projecting it
21 doesn't negate the fact that it is a -- the 10
22 million comes from the 180. If you are going to be
23 referring to the 10 million, that is not a projected
24 number.

25 That is, in fact, a raw count of the

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1 number of viewing minutes found among the 3,600
2 households to the 180 stations.

3 Q What you're saying is during a 16-week
4 period here in 1990, those 3,600 households viewed
5 non-network distant signal programming for a total
6 of 10 million minutes?

7 A That is correct.

8 Q And of those 10 million minutes,
9 approximately 8.3 million minutes were spent viewing
10 distant signal Movies and Syndicated programming;
11 correct?

12 A That is correct.

13 Q Now, have you done a breakout of those
14 8.3 million minutes to determine how many were
15 accorded Movies and how many were accorded
16 Syndicated Series?

17 A No, we did not.

18 Q Were you asked to do such a breakout by
19 MPAA?

20 A No, we were not.

21 Q Do you have any data available to you
22 that would allow you to do such a breakout?

23 A We have the original program typing
24 information. It would be a matter of retyping all
25 of the programs that fell into that bucket. But

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1 once the retyping was done, it would be possible to
2 regenerate those numbers.

3 But there is not a way that I could call
4 our production offices and say, "Run it off and have
5 it for me tomorrow."

6 Q Mr. Lindstrom, historically the Tribunal
7 has looked at Movies and Syndicated Series
8 separately. Are you aware of that?

9 MR. LANE: I'll object to the question.
10 There's no foundation.

11 CHAIRMAN DAUB: Mr. Garrett?

12 BY MR. GARRETT:

13 Q Mr. Lindstrom, will you assume for the
14 moment that the Tribunal has, as they can determine
15 from reviewing their past decisions, looked at
16 Movies and Syndicated Program Series separately?
17 Are you aware of that fact?

18 MR. LANE: I'll object to that question
19 as not accurately stating what the Tribunal has
20 decided in its past decisions.

21 MR. GARRETT: It's not worth it. I'll
22 pass.

23 BY MR. GARRETT:

24 Q You have not done any separate breakout
25 of Movies and Syndicated programming viewing on the

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1 peoplemeter; correct?

2 A That is correct.

3 Q Now, as I also understand your study
4 here, it shows that there was more time spent
5 reviewing the Local programming on these 180
6 stations than the Sports programming on these 180
7 stations. Is that correct?

8 A That is correct.

9 Q On Page 6 of your testimony, Mr.
10 Lindstrom, in the final paragraph, you have a number
11 there of 35,280,000. Do you see that?

12 A Yes, I do.

13 Q What does that number represent?

14 A That is a rough approximation of the
15 number of potential viewing minutes within the
16 course of a week among the entire 4,000 -- well, an
17 estimated average day of 3,500 homes.

18 Q Of those 35,280,000 minutes that
19 occurred during the course of a week, how many of
20 those minutes were devoted to viewing distant signal
21 Syndicated programming and Movies according to your
22 study?

23 A I would have to sit and do some math in
24 order to work that out.

25 Q I have a calculator if that would help.

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1 A Well, actually, when I think about it,
2 I'm sorry. No, it wouldn't help, the reality being
3 that, again, we are taking a sample of the stations
4 in order to develop the distributions. Therefore,
5 all of the viewing that was done to Syndicated,
6 Movies, Series, and Specials is, in fact, not there.

7 We're using 180 stations as a surrogate
8 for the 700. We are not projecting the data. So we
9 are not coming back and saying that the true actual
10 figure in terms of trying to calculate out ratings
11 data would be some form of division that you could
12 do on that 8 million and apply it against the 35.

13 I mean, those estimates could be worked
14 up in some fashion, but, in fact, the raw data is
15 not here in order to be able to do that.

16 Q Certainly the 10 million-minute number
17 that you have given here would not be applied
18 against that 35 million number to determine the
19 approximate amount of time that people, relative
20 amount of time that people, spend watching distant
21 signal Movies and Syndicated programming?

22 A No.

23 Q Thank you.

24 The 35 million number here is a weekly
25 number; correct?

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1 A That is correct.

2 Q And if we multiply that by the 16 weeks
3 in your study, we would get a number obviously
4 substantially higher than 35 million; correct?

5 A That is correct.

6 Q And the 10 million number that you have
7 put in the study here represents the total number of
8 minutes spent viewing distant signal on network
9 programming during the entire 16-week period;
10 correct?

11 A That is correct.

12 Q Do you have any approximation of --
13 well, let's just focus on the NTI peplemeter
14 households. Approximately how many hours a week
15 were those households viewing distant signal
16 Syndicated programming and Movies on the 180
17 stations?

18 A I am not sure. We didn't generate those
19 numbers.

20 Q Well, can you not determine that from
21 the information that you have already provided here
22 to the Tribunal?

23 A It is not as clear-cut as that in terms
24 of doing the math that would be required. The
25 reason for that, as we noted right in the beginning,

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1 not all of the homes are going to be in the sample
2 at any point in time.

3 It's always important to remember that
4 the homes that are coming in and replacing those who
5 are going out, the expectation and the way that it
6 generally works is that they view in fairly similar
7 patterns.

8 However, when we're looking at strictly
9 taking the gross number of homes, in this case 3,600
10 or so, it's not possible to simply divide out the 10
11 million by 3,600 to say, "Okay. It's about 4,000,"
12 that that would equal about 2 and a half thousand
13 minutes per household viewing to these homes simply
14 because each of them will be in the sample at
15 varying points in time and adjustments would have to
16 be made to account for that.

17 If we were to attempt to project this
18 viewing out, actually, the numbers would end up
19 being higher than this, but I think that it ends up
20 doing a disservice kind of all the way around to
21 attempt to develop an estimate of the total share of
22 viewing that is going to distant signals based on
23 the raw data that's here.

24 Q Thank you, Mr. Lindstrom, and do me the
25 disservice. Give me an idea of approximately how

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1 many hours a week people are viewing distant signal
2 Movies and Syndicated programming according to the
3 results of your survey.

4 A I can't tell you that information based
5 on the results from this study.

6 Q Well, if we started going along the
7 trail that you outlined earlier, we take our 10
8 million minutes and we divide that by 16 weeks, what
9 would we get?

10 A If I can borrow your calculator?

11 CHAIRMAN DAUB: That belongs to Mr.
12 Stewart.

13 MR. GARRETT: Nobody borrows Mr.
14 Stewart's calculator anymore.

15 THE WITNESS: Okay. It would be about
16 625,000.

17 MR. GARRETT: I got that.

18 BY MR. GARRETT:

19 Q I'm sorry. I missed it. If we're
20 talking the 8.3 million minutes of distant signal
21 Syndicated programming and Movies, how many minutes
22 does that come to during the course of a week?

23 A About 519,000.

24 Q And how many hours is that?

25 A It's about 8,000 hours, 8 and a half

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1 thousand.

2 Q And if we divide that by the 2,500
3 households that are in the sample at any given point
4 in time, 2,500 cable households, what do we come up
5 with?

6 A If you were to do the math, what you
7 would again attempt to do would probably be to use
8 the 36, the 3,600, but, again, I mean, a lot of this
9 is -- okay.

10 So it's somewhere in that regard at
11 about two and a half hours. And you would create
12 some sort of multiplier in order to figure out based
13 on the percentage of days during the course of those
14 four months that the homes, in fact, would have been
15 part of the installed cable sample.

16 Q If I understand here, Mr. Lindstrom,
17 when we take the 50 most widely carried distant
18 signals, WGN, WTBS, and the other top 50, plus a
19 random sample of another 134 of the remaining
20 distant signals -- and that's what you've done;
21 right?

22 A That's correct.

23 Q Your sample consists of the 50 most
24 widely carried distant signals and then 130 of the
25 remaining 600 distant signals that were carried in

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1 1990. Is that right?

2 A That's correct.

3 Q And on that basis, what your data shows
4 is that the average peoplemeter households spend
5 approximately two and a half hours a week viewing
6 distant signal Movies and Syndicated programming;
7 correct?

8 A Once again, I would say you're having me
9 go through math that, in fact, the figures can't
10 exactly justify because I don't know what the
11 multiplier effect would be.

12 It could be two and a half. It could be
13 five. But, I mean, it is some range of hours,
14 probably in the course of that.

15 Q What you're saying is that when you add
16 the lesser carried distant signals to your analysis
17 here, that two and a half hours is going to go up by
18 some amount; correct?

19 A No. I'm saying that we came up with two
20 and a half by saying we'll use the average number of
21 viewing minutes for the 3,600 and some odd homes.
22 Because the actual number of days that those people
23 would contribute during the course of those four
24 months is less, they -- for instance, some will, in
25 fact, have only been in for one month.

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1 Some will have been in for four. Some
2 will have been for three -- that you need to make an
3 estimate saying, "Well, the average viewed two and a
4 half hours, but that includes the people who are
5 only in there for one month."

6 So if you were to try and adjust for
7 that, then those people might be 10 hours.

8 Q Well, then why don't we --

9 A I'm just saying that you, in fact, can't
10 do that accurately. And so it does not have to do
11 with adding in the remaining stations. It simply
12 says you're trying to do something with numbers that
13 can't be justified to come up with a solid number.

14 To say that it is -- that the answer is
15 probably a couple of hours a week, however many that
16 might be, somewhere between two and a half and five,
17 might be reasonable, but you really cannot, based on
18 this data, try and get much more of a solid figure
19 than that.

20 Q Would it help any, Mr. Lindstrom, if
21 instead of dividing by the 3,500 households, you
22 divided by the 2,500, the number that you said are
23 viewing at any given time?

24 A Once again, you're going to turn around
25 and make a reasonable or an unreasonable estimate of

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1 the amount of usage. And that number will, in fact,
2 fall out somewhere between the two and a half and
3 five. And so it's probably as good an estimate as
4 any based on this, on the form that this data is
5 being reported in.

6 Q Do you put --

7 A If you -- sorry.

8 Q No. I'm sorry. You go ahead and
9 finish.

10 A No. I was going to say it would be
11 easier if, in fact, you took me to where you were
12 going unless you need an exact number. If you need
13 an exact number, in fact, that I can't do.

14 If it's in general that there, in fact,
15 is probably not huge amounts of viewing to distant
16 signals on cable, then that I would, in fact, agree
17 with.

18 Q But you do feel comfortable in
19 concluding that the amount of viewing to distant
20 signal Syndicated programming and Movies comes to
21 approximately two and a half to five hours during
22 the course of the week based upon the results of
23 your study?

24 A In eyeballing the results, I would say
25 that that would be a reasonable estimate.

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1 Q Do you have any idea how many hours of
2 Syndicated programming and Movies on distant signals
3 are available to the average cable household?

4 A No, I do not.

5 Q Do you have any data before you that
6 would allow one to make a reasonable estimate of how
7 many such hours are available?

8 A No, I do not. Again, the data that is
9 in front of us tells the number of quarter hours
10 that were programmed on the 180 stations. Very
11 clearly, a typical cable household does not have 180
12 stations available to them.

13 It is highly likely that the number of
14 distant signals that a given home would receive
15 might be three or four. And do not -- I mean, don't
16 take that number as fact. I'm trying to use it for
17 example purposes, but saying that there is, in fact,
18 absolutely no way that I could make any kind of
19 estimate, nor could anyone else, based on the data
20 that's here in terms of the number of the 180 nor
21 the 754 stations, how many of those are available on
22 average to these homes.

23 Q Well, assume that the average cable
24 household has three distant signals available to it.
25 Under those circumstances, approximately how many

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1 hours of Syndicated programming and Movies would be
2 available to that cable household?

3 A If they had three signals?

4 Q Three distant signals; correct. I'm
5 sorry. That was the number you gave. You said
6 somewhere between three and four; correct?

7 A Right. I'm saying if you said that
8 there were 3 signals and you assumed that each of
9 these services programmed in a similar fashion to
10 what was the average for the 180, which clearly it
11 wouldn't, by the way, I mean -- so I have to qualify
12 this because 22 percent of the programming that we
13 have listed here is noncommercial.

14 Obviously, the 22 percent is all from
15 PBS stations. So the typical non-PBS station, in
16 fact, would have higher percentages. Each of these
17 would have to kind of be added up and redivided by
18 .78 to come up with the number, which I might as
19 well do as long as I'm talking about it, and saying
20 typically, then, the non-PBS station would be
21 approximately 70.5 percent of the hours devoted to
22 Syndicated Series.

23 If we assume 24 hours a day, which not
24 everyone will be, at 72 hours a day times 7.

25 MR. LANE: It can't be 72 hours a day.

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1 THE WITNESS: Well, 3 signals. That's
2 24 hours a day, 3 signals, 72 hours a day. That's
3 504.

4 MR. GARRETT: If you have any trouble
5 with your math, you'd better ask Mr. Stewart, rather
6 than Mr. Lane.

7 THE WITNESS: Right. Five hundred and
8 four hours a week and times .705 would say 355 hours
9 of Syndicated programs or Movies would be available
10 if one assumes 3 stations.

11 BY MR. GARRETT:

12 Q Well, let's assume that. We can assume
13 more if you'd like. Actually, the Larson data --
14 I'm not sure if it's been introduced or not, but the
15 Larson data shows approximately 3.5. Let's just
16 accept your three, which is on the lower side.

17 What was your number again?

18 A I would assume that Larson would include
19 PBS, which would be about 20 percent, which would
20 take you up to your 3.5. I don't know, I mean,
21 without having said it.

22 But I worked that out to 355,
23 approximately 355 hours of Syndicated.

24 CHAIRMAN DAUB: Mr. Garrett, the Larson
25 data you are referring to is the CDC?

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1 MR. GARRETT: Yes, ma'am.

2 CHAIRMAN DAUB: Thank you.

3 BY MR. GARRETT:

4 Q As a reasonable approximation, we can
5 say, then --

6 A Movies and Special -- or Syndicated, not
7 Movies and Sports.

8 Q Wishful --
9 (Laughter.)

10 MR. GARRETT: I never forget who's
11 paying me. Thank you. What amazes me the most
12 about that, Mr. Lindstrom, is that you could
13 actually read what I wrote.

14 CHAIRMAN DAUB: I was just going to say
15 glad you can read his handwriting.

16 COMMISSIONER GOODMAN: I call it a trial
17 technique.

18 MR. GARRETT: I almost caught it. I
19 almost caught it.

20 BY MR. GARRETT:

21 Q What we're saying here is that for the
22 average NTI peoplemeter household, they received
23 approximately 355 hours a week of Movies and
24 Syndicated Series at a distant signal basis in 1990;
25 correct?

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1 A Well, again, we would be talking cable.
2 And I still have to qualify it. I'm not in a spot
3 of knowing how many distant signals on average can
4 be received by the NTI cable homes.

5 I can say if it were 3, then that is the
6 way it would work out, that 3 distant signals would,
7 in fact, on a 24-hour basis, assuming that these
8 percentages are right, give you 355 hours.

9 Q Well, you talked earlier about these or
10 the scientific sampling process that goes into
11 selecting these households. Do you recall that
12 testimony?

13 A That's correct.

14 Q Now, would we assume that the number of
15 distant signals that these very scientifically
16 chosen NTI cable households receive is approximately
17 the same as what they would be in the whole
18 universe?

19 A That's correct.

20 Q You do a number of different controls,
21 don't you, when you are selecting this NTI sample?

22 A Yes, we do.

23 Q By "control," what I mean is that you
24 ensure that the households will have certain types
25 of characteristics so that you can then project the

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1 sample out to the whole United States; correct?

2 A I need to give a qualified response on
3 that because technically the answer is actually no.
4 We are doing an area probability sample, where we're
5 selecting households. And we don't care who's in
6 them. I mean, they're selected. That's it.
7 They're the people that we want in the sample.

8 And so in that case, we are not picking
9 our sample in any fashion based on who's in it or
10 what they have. Other research companies have tried
11 to do something differently, but, in fact, that is
12 not what we do.

13 On the other hand, if we go in to
14 permission a home and the household refuses to
15 cooperate with us, then we want to make sure that
16 certain key factors for television usage remain the
17 same.

18 So that if we go in, we check on the
19 characteristics of whether or not the initial home
20 was cable and whether or not they had kids, both of
21 which are very key in terms of television viewing.

22 We will then make sure that the next
23 alternate, the home that replaces this person who
24 wouldn't agree, also matches in terms of the status
25 of presence of kids or cable and non-cable so that

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1 you will still retain a balanced sample in that
2 regard.

3 Q But you don't do any special controls to
4 ensure that your NTI households receive an average
5 number or representative number of distant signals,
6 do you?

7 A We do not.

8 Q But it is your assumption, is it not,
9 that the NTI cable households do, in fact, receive
10 the average number of distant signals; correct?

11 A That is correct.

12 Q And if the Larson data reports that the
13 average number of distant signals received in cable
14 households, including distant PBS signals, is 3.5,
15 then you would assume, would you not, that the
16 average number would be the same for the households
17 in the NTI sample?

18 A Under those assumptions, that sounds
19 reasonable.

20 Q Okay. And of those 355 hours of distant
21 signal Movies and Syndicated Series that are
22 available during the week, would it be fair to say
23 that approximately 2 and a half to 5 hours are
24 actually viewed by the average cable household in
25 the NTI sample?

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1 A I hate to keep qualifying it all. I'll
2 say kind of conditionally that that's correct, but
3 it would probably be more accurate to say of the
4 people who, in fact, viewed any distant signals, the
5 average was somewhere between two and a half and
6 five.

7 Q Of the three --

8 A But for the time being, I'll certainly
9 concede the argument.

10 Q Two and a half to 5 hours of the 355
11 hours that were available.

12 Now, the peoplemeter measures viewing on
13 a 24-hour-a-day basis, does it not?

14 A That is correct.

15 Q And the data that you have presented
16 here for the meter study are based on 24 hours a
17 day; correct?

18 A That is correct.

19 Q That, incidentally, is the difference
20 from the diary-based study, which represents viewing
21 during 20 hours a day. Am I correct?

22 A That is correct.

23 Q Mr. Lindstrom, if we have 355 hours of
24 distant signal Movies and Syndicated Series
25 available to the average cable household,

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1 approximately how many hours of Sports on the
2 distant signals would be available to the average
3 cable household?

4 A Somewhere in the neighborhood of about
5 five.

6 Q Five hours?

7 A Oh, wait a minute. Hold on a second.

8 (Pause.)

9 THE WITNESS: Right.

10 COMMISSIONER GOODMAN: That's five hours
11 of viewing; right?

12 MR. GARRETT: Yes.

13 THE WITNESS: Right.

14 MR. GARRETT:

15 Q Let me just direct your attention again
16 to Page 6 and down to that bottom paragraph near
17 that 35 million number you had there, Mr. Lindstrom.

18 A Okay.

19 Q Two sentences earlier, you say, "Each
20 minute measured for each household can be thought of
21 as sampling point, the equivalent of one person
22 being asked a question." Is that what you say
23 there?

24 A Yes.

25 Q Now, what I understand that to mean is

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1 that your peplemeter on a 24-hour-a-day basis is
2 asking a household, "What are you viewing during
3 this minute?" Right?

4 A That's the analogy, yes.

5 Q And they do that 60 minutes an hour and
6 they do it 24 hours a day and 7 days a week and 16
7 weeks during your 4 cycle periods; correct?

8 A That's correct.

9 Q And when they're asking that question of
10 the household, "Are you viewing?" during the vast
11 majority of those hours, people, the peplemeter
12 households, aren't going to be able to say "Yes" to
13 Sports programming. Isn't that right?

14 A That is correct.

15 Q I mean, basically, Movies and Syndicated
16 --

17 A Well, I should actually qualify that
18 just to make sure. They can't say "Yes," but they
19 can say "No." Clearly, if it's not on, they're not
20 watching it.

21 Q Right. The vast bulk of the day, you
22 don't have Sports programming being programmed;
23 correct?

24 A That's correct.

25 Q But, as I understand the results of your

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1 study here, you have basically said that -- strike
2 that.

3 Is it correct to say that you have not
4 distinguished in your study between a minute of
5 viewing of any programming at 2:00 o'clock in the
6 morning and a minute of viewing at prime time?

7 A That is correct.

8 Q You give equal weight to those minutes,
9 regardless of what portion of the day they may
10 occur; correct?

11 A I don't see how or why you would do
12 differently.

13 Q Well, I didn't suggest that you should,
14 Mr. Lindstrom. I just asked you what you did.

15 A That's correct.

16 Q Okay. So that in your study, someone
17 who spends two hours watching a Cubs game on WGN in
18 prime time --

19 A I'm sorry. Could you repeat that again?

20 Q Okay. Someone in your study, one who
21 would spend two hours watching a Cubs game during
22 prime time, that person's minutes would give an
23 equivalent weight to someone who saw a couple of
24 Syndicated shows at 3:00 o'clock in the morning;
25 correct?

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1 A That is correct.

2 Q If those Syndicated shows occupied two
3 hours of time. Am I correct?

4 A Correct.

5 Q And I also take it you don't distinguish
6 among who is watching that programming in your
7 study, do you?

8 A We do not. These are household-based.

9 Q So if one of my kids turns on a
10 Flintstones cartoon at 8:00 o'clock in the morning
11 and watches that for a half an hour, again, that's
12 given the same weight in your study as if I come
13 home and watch the last quarter of a Bulls
14 basketball game, which takes half an hour?

15 A That's correct.

16 Q Strike that. If it's the last quarter,
17 it probably takes two hours.

18 Q That is correct?

19 A That is correct.

20 Q Is it fair to say, Mr. Lindstrom, that
21 your peplemeter households really don't spend very
22 much of their time viewing distant signal Movies and
23 Sports?

24 A I would not put the qualitative judgment
25 on it. There's an awful lot of people who would be

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1 loving to get to it after five hours of viewing. I
2 would say that since a typical household is viewing
3 somewhere around 50 hours a week or so, that it is
4 reasonable to say that probably between 5 and 10
5 percent of their viewing, again, based on the
6 assumptions that we made, would be going to distant
7 imported Syndicated, Movies, or Series.

8 Q Well, that's still a rather small
9 proportion of the total viewing time, don't you
10 think?

11 A No. I'm saying I could not put a label
12 on that because, in fact, as I said, there are
13 people who would kill to have 5 to 10 percent of --
14 a 5 to 10 percent share.

15 So, you know, not to tag me with
16 "little," that's all. I just -- I'll grant the
17 point in terms of it is perhaps 5 to 10 percent, but
18 I would not necessarily say that that's a small
19 amount of time.

20 Q Well, would you agree that they
21 obviously value other programming a lot more than
22 they do distant signal Movies and Syndicated
23 programming? Fair?

24 A I would not say that, nor do I think
25 that that's a judgment that could be made from any

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1 of the data.

2 Q Really? Well, would you say the same
3 thing about distant signal Sports, which account for
4 approximately seven percent of the viewing in your
5 meter-based study? Are you here saying anything
6 about the value that people attach to that seven
7 percent of their time?

8 A No. I'm simply saying that seven
9 percent of the viewing minutes went to Sports. I'm
10 not placing any type of value judgment on that
11 whatsoever. That's not our position.

12 Q They may value that seven percent of
13 their time much more highly than that seven percent
14 figure might reflect?

15 A It is impossible to say because we're
16 simply reporting on what their behavior is, not a
17 qualified -- a qualitative judgment on that in any
18 fashion. You could make a case either way.

19 Q We'll have to look somewhere else to
20 find out whether or not people value that particular
21 programming more highly than that seven percent
22 number suggests; correct?

23 A I am saying we're measuring the behavior
24 and am not making any type of qualitative judgment
25 on it.

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1 Q I see.

2 Let me ask you another thing about the
3 way you've selected your sample; that is, for the
4 studies here, Mr. Lindstrom. Say you took 130 of
5 the -- strike that.

6 All of the top 50 stations in terms of
7 their distant signal carriage in 1990 were included
8 in certainty in your study; correct?

9 A That is correct.

10 Q So that assures that you got
11 measurements of signals like WTBS, WGN, WWOR, WSBK,
12 KTBT, KTLA, all the way down; correct?

13 A It ensures that you will have more of
14 the stations with the largest number of distant
15 cable subs in your sample so you're using your
16 sample as efficiently as possible.

17 Q Of the 134 stations that you selected
18 from the remaining 754, did you make any effort to
19 control to ensure that you got a representative
20 sampling of stations with Sports on it?

21 A There are two things. Just again, it
22 wasn't 134. It was 130. And no controls were made
23 in any regard other than on the two strata defined
24 by the number of distant cable subscribers to each
25 station. After that, it's strictly a random sample.

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1 Q Well, would it be fair to conclude, Mr.
2 Lindstrom, that those stations that do not have
3 Sports on them are not as widely carried as those
4 stations that do have Sports?

5 A I don't have any basis for making that
6 conclusion from the data.

7 Q Do you know of the 130 stations that you
8 have included in the sample how many of them are
9 Sports stations?

10 A No, I do not.

11 Q And you made no effort to ensure that
12 you would have a representative proportion of Sports
13 stations, did you?

14 A We did not control on that, no.

15 Q Now, as I understand your study, you get
16 a weighting process for those 150 stations; correct?

17 A For the --

18 Q Hundred and thirty stations. Excuse me.

19 A For the 130, yes.

20 Q Okay. You mentioned a multiple of five
21 earlier in your testimony. Do you recall that?

22 A That's correct, approximately five.

23 Q Would I be correct in saying that then
24 each minute of viewing to one of those 134 stations
25 would be given a credit of 5 times one minute?

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1 A Again 130, not to --

2 Q I'm sorry. I was trying to make your
3 sample look better than it was.

4 A But that is correct.

5 Q So if on these 130 stations you had --
6 strike that. If your peplemeter households viewed
7 one minute of Movies and Syndicated programming on
8 any of those 130 stations, it would be counted
9 actually as 5 minutes; correct?

10 A That is correct because they represent
11 the four stations that were, in fact, not selected.
12 So the one station that you're bringing in as your
13 sample station is representing four others.

14 And so a minute of viewing on Station 1
15 that's included in that subsample does need to be
16 adjusted to account for the four minutes of these
17 four stations that, although in the frame, were not
18 selected to be part of the sample.

19 Q Just so I understand, when you say that
20 there were 10 million minutes of viewing, in fact,
21 all of the households in your sample recorded a
22 number less than 10 million. And it's correct?

23 A That is correct.

24 Q But then that number was grossed up here
25 by some amount in order to account for the fact that

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1 you didn't look at the programming at all 700-odd
2 distant signals; correct?

3 A That is correct.

4 Q So going back to an earlier conversation
5 that we had, you did try to account in your study
6 here for the fact that these households were not
7 viewing all of the distant signals that are out
8 there?

9 A Right. I would correct, in fact, what I
10 said before. The adjustment is made to come up with
11 an estimated number of minutes in total once the
12 weighting is taken into place.

13 Q Well, if you keep that fact in mind,
14 what does that do to the two and a half to five
15 hours that we had up there?

16 A That, in fact, has not changed that
17 because we were going in on the assumption that the
18 households viewed those 10 million minutes, and we
19 used the 3,600 homes. The adjustment is really how
20 long that they would be involved in the installed
21 sample.

22 So, in fact, as we did the math, it
23 wasn't taken into account, that portion of it, the
24 qualifier simply being that does represent all
25 stations with distant signal carriage, but that

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1 would play into the 3-station number that you were
2 using to estimate the 355 hours.

3 I guess the bottom line, just so
4 everybody doesn't get lost in there, was, in effect,
5 as we walked through the math, that was already
6 assumed. So that those figures would still hold.

7 COMMISSIONER GOODMAN: Am I right that
8 the 2 and a half number is based on 2,600? Isn't it
9 or -- there were 2 numbers, 3,600 and 2,600.

10 THE WITNESS: The number that I had said
11 was if you divided it out and assumed 10 million
12 minutes and 3,600 homes approximately, it would work
13 out to about 2 and a half hours.

14 But since they were actually, at any
15 given point in time, on average less than that, you
16 really have to adjust it up and sort of saying it
17 would fall somewhere between probably 50 and 100
18 percent higher.

19 And if you were to use the 2,500 homes,
20 it would probably be 3 and a half hours if you --
21 you know, it's just a rough range on that.

22 COMMISSIONER GOODMAN: I thought that's
23 where the five came in. I thought that's where the
24 five hours came in.

25 THE WITNESS: Oh, the five hours was

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1 just saying that a portion of the homes will clearly
2 be turning over or will be dropping cable, et
3 cetera. So that how many of them were there at any
4 given -- were there on average, possibly half of
5 them.

6 I mean, do you follow saying that the
7 average length of time that somebody might have been
8 in the sample would probably be between six and nine
9 months. Certainly it wouldn't be less than six
10 months.

11 So it was making a range saying it would
12 be 2 and a half hours if everybody was in for 12
13 months. It would be five hours if everybody was in
14 for six months. And it's probably the reality
15 somewhere in the middle there.

16 BY MR. GARRETT:

17 Q Mr. Lindstrom, I'd like to just follow
18 up on a couple of questions that the Chairman had
19 asked before the lunch break. I understand that
20 there are -- Mr. Lindstrom, let me just take my
21 calculator back in case Mr. Stewart has to use it.

22 As I understand it, there are basically
23 four methods that the A. C. Nielsen Company
24 employees collect audience data, one being telephone
25 coincidentals; correct?

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1 A That's correct. Do we need to explain
2 what a coincidental is? Would that be --

3 Q Sure. Why don't you go ahead and do
4 that?

5 A A coincidental is just a telephone
6 methodology where you call a sample of homes and ask
7 them what they were viewing at the time the phone
8 rang. It's very similar to that one-minute measure
9 off the meter because you're getting, again, kind of
10 a "Yes"/"No," "What are you viewing?" rate at this
11 point response.

12 And coincidentals are, in fact, widely
13 used as a way of developing ratings data.

14 Q Incidentally, if we did a telephone
15 coincidental at, say, between the hours of 9:00 in
16 the morning and 12:00 in the afternoon, we would
17 find that nobody was there watching Sports; correct?

18 A You will probably find some people
19 watching ESPN and other things, but they obviously
20 would not be watching if Sports was not on.

21 Q You want me to acknowledge that the
22 Sports on ESPN is -- never mind. The --

23 A I'm just trying technically to make sure
24 that we're as clear on each of these as possible.

25 Q Well, if you did a telephone

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1 coincidental between 9:00 and 12:00 Eastern Standard
2 Time in the morning and somebody asked, "Well, what
3 distant signal program are you watching at this
4 time?" nobody would say "Sports"; right?

5 A Again, just for the record, it's not
6 what distant signal you're watching. It's what
7 channel you're watching. So it's very not
8 ambiguous, but it is, in fact, disguised on what
9 you're measuring.

10 But I will concede your point with what
11 I think you're saying, which is simply that if
12 something is not on, it's not going to generate
13 viewing.

14 Q Now, you said it much more articulately
15 than I did. Maybe next year, Mr. Lindstrom, I'll
16 use you as my witness, but I'm not sure we can
17 afford you.

18 The other is the diaries; right? That's
19 another method of collecting viewer --

20 A That's correct.

21 Q I'll skip past that. I won't bring up
22 that subject.

23 The other is the peplemeter; right?

24 A That's correct.

25 Q And the other study that MPAA has

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1 presented over the years in these proceedings is
2 based on diaries; correct?

3 A Past studies have been based on a diary
4 methodology.

5 Q And the study you're talking about this
6 morning is based upon this peplemeter methodology;
7 correct?

8 A That is correct.

9 Q Now, the Chairman also talked earlier
10 this morning about meters in the 25 or 29 major
11 markets. Do you recall that?

12 A Yes, I do.

13 Q For those, could we call those just
14 passive meters?

15 A Household meters or metered markets is
16 probably the best.

17 Q The meters that you use in the top 29
18 markets are different, are they not, from the
19 peplemeters?

20 A Fundamentally, no. The best thing, just
21 to make sure, again, that it is clear, is that the
22 meter used in the metered markets is measuring on a
23 household basis and, you know, measuring what's at
24 the tune of this -- what channel the set is tuned to
25 or the converter or the other inputs, as does the

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1 peoplemeter.

2 The way to really think about the two
3 devices is that, for all intents and purposes, the
4 household meter is identical, but you're kind of
5 getting a revved-up extra accessory on the
6 peoplemeter, which is what collects the people data.

7 Q Or demographic data; correct?

8 A Demographic data.

9 Q The enhancement here with the
10 peoplemeter is that you not only know how many
11 households are tuning into the program, but you know
12 what the makeup of that audience is; correct?

13 A That is correct.

14 Q But when you use the meters in the major
15 markets here, all those meters are telling you is
16 how many people are watching at a given time;
17 correct?

18 A How many households.

19 Q Excuse me. How many households are
20 watching at a given time; correct?

21 A That is correct.

22 Q And in order to get the demographic
23 information in the metered markets, we go back to
24 diaries; correct?

25 A That is correct.

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1 Q And it's the diaries in those metered
2 markets that are used for determining whether
3 viewing at any given time is primarily male 18 to 49
4 or whatever the demographic characteristics are;
5 right?

6 A That is correct.

7 Q All right. So we understand, here also
8 we have two services that Nielsen provides. One is
9 the NSI, and the other is the NTI; correct?

10 A There are four services.

11 Q And you also have Nielsen Homevideo
12 Index service?

13 A Homevideo Index and NSS.

14 Q But let me just focus for a moment. Two
15 of the services that Nielsen provides are NSI and
16 NTI; correct?

17 A That is correct.

18 Q All right. And NSI is what you call
19 local measurements; correct?

20 A That is correct.

21 Q And this is the service in which you
22 divide the entire country into 200-plus markets;
23 correct?

24 A That is correct.

25 Q Each market called a DMA; correct?

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1 A That is correct.

2 Q And in each one of those 200 markets,
3 you select a separate sample of households?

4 A That is correct.

5 Q And then you send that separate sample
6 of households diaries that they complete on a weekly
7 basis; correct?

8 A That is correct.

9 Q But in 29 of the major markets
10 currently, you also have metered households;
11 correct?

12 A That is correct.

13 Q And when you publish an NSI local
14 report, say for the Washington DMA, you provide
15 information as to the total number of households
16 watching a program at any given point in the day;
17 correct?

18 A Again, just technically the average
19 number. So the average number of households.

20 Q You would say that there are, for
21 example, 10,000 households watching Cheers during
22 7:00-7:30 on WDCA; correct?

23 A Correct.

24 Q And that 10,000 number is derived from
25 the meter; correct?

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1 A That is correct.

2 Q And then you go to the diaries to find
3 out what the makeup is of the 10,000 households;
4 correct?

5 A That is correct.

6 Q But the diaries may show that there was
7 a different number of households watching Cheers;
8 correct?

9 A That is correct.

10 Q But you don't use that number, do you,
11 for purposes of your NSI local reports?

12 A Those numbers are used in the
13 calculation procedures, but they are not reported
14 individual.

15 Q Even though the diaries in these 29
16 markets might show that a particular program had
17 10,000 households viewing it, that information would
18 not be used for purposes of preparing your standard
19 NSI reports; correct?

20 A Once again, that information is used in
21 the actual calculation procedures regarding the
22 makeup of the audience. That is not a number that
23 is recorded. So I'm not sure what you're saying,
24 but --

25 Q Okay. I'm not being very precise. Let

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1 me try it again. If the meter showed that there
2 were 5,000 households watching that program during
3 that half-hour and if the diary showed that there
4 were 10,000 households watching that program during
5 the half-hour, your NSI reports would provide the
6 meter number; correct?

7 A That is correct.

8 Q They would not provide the number that
9 comes from the diaries; correct?

10 A That is correct.

11 Q But it is correct, is it not, that in
12 the study that you have done, diary-based study,
13 that you would use that number for the diaries?

14 A That is correct.

15 Q You used that number for all of the
16 markets? I'm sorry. That's not clear. Even in
17 metered markets, you will take the diary data and
18 not the metered data as to the number of households
19 that watched a particular program; correct?

20 A That is correct.

21 Q And that's in doing the MPAA diary-based
22 study; correct?

23 A That is correct.

24 Q And you will recall because you allude
25 to it in your testimony that last year there was a

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1 considerable discussion in these proceedings as to
2 your decision not to use the meter-based data in the
3 top markets; correct?

4 A That is correct.

5 Q And it's your judgment that you should
6 not use meter-based data; correct, in doing the MPAA
7 study?

8 A It was our judgment that you should not
9 mix methodologies, that if you were going to use a
10 diary basis across the country, you should use
11 diaries in the metered markets as well and that you
12 should not have some homes that have meters and some
13 homes that have diaries and sum them together, for
14 at least the purposes that we were generating the
15 data for for the MPAA.

16 Q And, as you know, the Joint Sports
17 Claimants and their experts did not share that view?
18 Is that your understanding?

19 A I believe you when you say that.

20 Q Thank you.

21 Now, in 1990 how many metered markets
22 were there?

23 A Twenty-four.

24 Q And approximately how many households in
25 those 24 metered markets, what percentage of the

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1 total households in the United States?

2 A It's about 46 percent.

3 Q Okay. So, basically, you had available
4 to you in 1990 metered data on distant signal
5 viewing in about half of the households in the
6 country; correct?

7 A That's correct.

8 Q And that 46 percent number today would
9 be approximately what?

10 A 50.7.

11 Q Now, none of the data that you are
12 reporting in these proceedings here for MPAA are
13 derived from the metered households in those major
14 markets; correct?

15 A Again, I have to clarify that statement.
16 There are obviously peoplemeter homes in those
17 markets as well. So the markets themselves are
18 included in the measurement, but it's the
19 peoplemeter homes, not the separated metered market
20 homes.

21 And it's important to just -- so that,
22 obviously, if there were 4,000 homes and New York
23 makes up 8 percent of the country or so, then you
24 should have about 300 and some odd peoplemeter homes
25 in New York. You will also have 500 or so metered

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1 market homes in New York, and those are two separate
2 sets of homes and households.

3 Q The diary-based study that you're
4 presenting has no meter data in it; correct?

5 A That is correct.

6 Q But your metered study is taken solely
7 from peplemeters that are used in your NTI service;
8 correct?

9 A That is correct.

10 Q Now, of the two studies, the diary-based
11 and the meter-based, which do you feel is the more
12 reliable for the Tribunal?

13 A I think that, all things considered,
14 that meters are preferable to diaries. And I think
15 we have said that at past Tribunals as well and had
16 conceded that point.

17 Q So you would take greater comfort in the
18 -- I'm sorry. Strike that.

19 You would feel that the meter-based
20 study that you're presenting here for the first time
21 is more reliable for the Tribunal's purposes than
22 the diary-based study?

23 A For the purposes of the Tribunal, yes, I
24 believe that meters are better than diaries.

25 Q Now --

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1 THE WITNESS: Sorry to break. Could I
2 take a two-minute break?

3 MR. GARRETT: Sure.

4 THE WITNESS: I hope that was an
5 appropriate place to break.

6 (Whereupon, the foregoing matter went
7 off the record at 3:10 p.m. and went
8 back on the record at 3:20 p.m.)

9 CHAIRMAN DAUB: Back on the record. Mr.
10 Garrett, please continue.

11 BY MR. GARRETT:

12 Q Mr. Lindstrom, let me just ask you to
13 turn to your written testimony here on Page 1. Do
14 you have that before you?

15 A Yes, I do.

16 CHAIRMAN DAUB: I'm sorry, Mr. Garrett.
17 Page what?

18 MR. GARRETT: Page 1.

19 CHAIRMAN DAUB: Sorry.

20 BY MR. GARRETT:

21 Q Mr. Lindstrom, in preparing this written
22 testimony, did you review the testimony that you
23 provided in the 1989 proceeding?

24 A No, I did not.

25 Q In preparing for your testimony here

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1 today, did you review the testimony that you had
2 provided to the Tribunal in the 1989 proceeding?

3 A I reviewed a couple of pages, but I did
4 not review the entire thing.

5 Q Did you review a couple of pages of the
6 transcript of your oral testimony?

7 A Yes, I did.

8 Q Did you review the written statement
9 that you provided to the Tribunal?

10 A No, I did not.

11 Q Mr. Lindstrom, the testimony in the
12 first four paragraphs there on Page 1 appears to be
13 pretty much identical to testimony that you provided
14 in the 1989 proceeding. Is that not correct?

15 A It's taken from a kind of standard PR
16 piece that's prepared on the background of the
17 company. So that it doesn't surprise me that, in
18 fact, the two were quite similar.

19 Q This PR piece is one that says that "The
20 Nielsen name is synonymous with television ratings"?

21 A That is correct.

22 Q Let me just hand you a copy of the
23 written statement that you had submitted during the
24 rebuttal phase of these hearings. I don't think
25 there's any need to mark it as an exhibit since it's

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1 already included in the record.

2 Do you recall having provided this
3 written testimony to the Tribunal in the 1989
4 proceeding, Mr. Lindstrom?

5 A Yes, I do.

6 Q Let me just ask you to turn to the final
7 page of that testimony. Do you see the last line of
8 your testimony?

9 A Yes, I do.

10 Q Could you read that into the record?

11 A It says, "The diary based data base
12 provides, in our opinion, the best method for
13 reporting data of the type required for the
14 Copyright Tribunal."

15 Q And then let me ask you to read into the
16 record the last line of the paragraph right before
17 that on Page 6.

18 A The one right before that?

19 Q That last paragraph.

20 A It says, "This is witnessed by the
21 diary's 35 year history as the primary local market
22 measurement tool."

23 Q I'm sorry. I was referring to the final
24 sentence of the preceding paragraph.

25 A "Meters have also been eliminated due

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1 to" the "insufficient sample sizes to produce
2 reliable data of the type required."

3 Q All right. Now, let's just take that
4 one first, Mr. Lindstrom. What were you referring
5 to when you talked about "data of the type
6 required"?

7 A Without going through this to review it
8 and going strictly off of recollection --

9 Q Would you like to take some time to
10 review it?

11 A You can correct me if I'm wrong. I'm
12 sure that you will. But I believe that I had gone
13 through and laid out that there was a twofold
14 purpose to the studies that were being produced, one
15 of which was for use with the Tribunal for the
16 general distribution of funds. And the secondary
17 purpose that was being used by the MPAA was for the
18 distribution among their member companies.

19 And considering the two pieces of the
20 study that we were being commissioned to use, then
21 the diary was the only way to go simply because --
22 and the same holds true now, that the sample sizes
23 are not sufficient to report individual program and
24 station data.

25 Once that aspect of our -- "charter" is

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1 not the right word -- our task, or whatever, the
2 study that we were being commissioned to provide,
3 once that aspect of it was eliminated, then we could
4 look at the peoplemeter as an alternative.

5 And, again, correct me if I'm wrong, but
6 I do believe that I did go on the twofold purpose
7 when I put together this exhibit.

8 Q All right. Now, the statement there
9 about meters having insufficient sample size, first
10 of all, the meters you were referring to there were
11 peoplemeters. Is that correct?

12 A That's correct.

13 Q You were not referring to the meters in
14 the NSI markets; correct?

15 A No, I was not referring to them with
16 that statement. I wasn't not referring to them
17 either. I was -- it had no bearing on that
18 statement.

19 Q The meters that have the insufficient
20 sample size are the peoplemeters. That's what
21 you're referring to?

22 A That is correct.

23 Q And when you say they had insufficient
24 sample size, what you were saying in the '89
25 proceeding is that they were insufficient sample

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1 sizes for purposes of MPAA's Phase II distributions?

2 A That is correct.

3 Q And you were not referring, then, to the
4 task in front of the Tribunal in allocating
5 royalties in Phase I; correct?

6 A That is correct.

7 Q Now, you understand, do you not, that in
8 the '89 proceeding, there was no Phase II dispute?
9 You were testifying there in as Phase I controversy?
10 Do you understand that?

11 A I understand that. And I was testifying
12 about a study that we were commissioned to do by the
13 MPAA for which there were two purposes, which
14 dictated the methodology.

15 Q So in the '89 proceeding, would it be
16 fair to say that if your task had simply been to
17 allocate the funds among the broad claim groups in
18 the '89 proceeding, you would have held the view
19 that the peoplemeter had a sufficient sample size
20 for purposes of producing a study for the Tribunal?

21 A That is correct.

22 Q And that is your testimony here today?

23 A Yes, it is.

24 Q And when you say that "The diary based
25 data base provides the best method for reporting

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1 data of the type required for the Tribunal," were
2 you referring there to the Phase I disputes or Phase
3 II disputes?

4 A I am referring to the overall, again,
5 charter of the study that we were -- I have to come
6 up with a better word that says -- yeah, the study
7 for which we were commissioned that, in fact, the
8 diary database provided the best method for
9 reporting that type of data.

10 Q But you don't think it provides the best
11 method for reporting the data that the Tribunal
12 would use in the Phase I proceedings; correct?

13 A I feel that, all things considered, a
14 meter measurement is preferable to the diary one,
15 yes.

16 COMMISSIONER GOODMAN: May I just ask
17 something. I'm getting confused. Frequently you
18 refer to meters and sometimes peplemeters. When
19 you say, for example, that a metered study is
20 preferable, do you mean a peplemeter study?

21 THE WITNESS: I'm actually glad you
22 asked that so we can kind of make sure that we're
23 clear again all the way around. I will probably end
24 up using peplemeter and meters somewhat
25 interchangeably because, again, the fundamental

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1 device, the meter, which is just an electronic way
2 of measuring what people are viewing, is the
3 preferable measurement.

4 And there's loads of reasons, the
5 primary one being you don't have to have anybody do
6 anything. And in a diary, they have to fill it out.
7 And you are getting a continuous measurement, et
8 cetera. I mean, there is -- you know, some of which
9 will come up here and certainly has in past
10 testimony.

11 But a metered measurement is generally
12 considered a superior measure because you are
13 collecting continuously and without anyone's having
14 to do anything. So it's a passive measurement.

15 And I will refer to the meter kind of
16 generically in that fashion, say a meter is better.
17 And, therefore, that is the reason why the top,
18 although it's not quite the top, 29 markets, but --
19 29 of the local markets have made the decision that
20 they would prefer to have meters put in, rather than
21 use the diary for their measurement because they've
22 made the determination that they feel that meters
23 are better.

24 A peplemeter is a specific type of
25 device, again with the added thing on to get the

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1 person's data, but we're not using that. But when I
2 refer to the peplemeter, it will be in order to
3 differentiate it that it's the national sample, as
4 opposed to the metered markets, which are the local.

5 I don't know if that helped clarify any
6 more. I kind of went around in circles again. But
7 it is important to keep in mind that these are, in
8 fact, three separate samples.

9 And, again, just as a note that the
10 equivalent for the peplemeter is 100 percent of the
11 country, versus the metered markets, which are
12 covering approximately 50 percent.

13 COMMISSIONER GOODMAN: Thank you.

14 BY MR. GARRETT:

15 Q Mr. Lindstrom, when you testified in the
16 1989 Phase I proceeding, your view was that the
17 diary methodology really provides the best method
18 for allocating royalties among individual programs;
19 correct?

20 A That is correct.

21 Q But you were telling the Tribunal in the
22 '89 proceeding that the diary methodology provides
23 the best method for allocating the royalties in
24 Phase I, were you?

25 A I don't recall being asked. But, again,

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1 I would say that, again, the preference would be for
2 meters, rather than diaries. And in our overall
3 scope of the study, the diaries were the selected
4 choice.

5 Q Mr. Lindstrom, let me ask you this:
6 You're familiar with the FCC Syndex rules, are you
7 not?

8 A I'm familiar with some of them.

9 Q And you're aware, are you not, that
10 those rules went into effect in 1990?

11 A I couldn't tell you the dates that they
12 went into effect.

13 Q What is your general understanding of
14 what the rules do?

15 A Basically, they're forming a method of
16 protection whereby programs that are being imported
17 can be blacked out in other markets in the broadest
18 sense, saying that not necessarily all programs can
19 be brought into all markets on a distant basis.

20 Q When you say "all programs," what kind
21 of programs are you referring to?

22 A Syndicated programs.

23 Q Movies and Syndicated Series?

24 A That is correct.

25 Q Thank you.

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1 Do the existence of those rules put any
2 special difficulties on Nielsen for collecting on
3 data, audience data?

4 A They present major difficulties, which
5 has required a good deal of work on our part to be
6 able to handle. We have to have complete records on
7 every cable system in the country and what they're
8 doing in forms of protection so that we can, in
9 fact, correctly edit diaries.

10 For example, there are many things that
11 cable system will do; in some cases, substitute the
12 same program over the distant signal. You know, if
13 WABC has -- well, that's a wrong -- bad example.

14 But say somebody has -- PIX has Cheers
15 and WGN has Cheers. Then coming into the New York
16 market, somebody -- some system might, in fact, just
17 put the PIX Cheers over where GN's signal was and
18 switch back at the end of that time period. In some
19 cases they'll run blackouts.

20 A lot of these things can become very
21 confusing. So we, in fact, need records to know
22 because they -- an individual who is a subscriber on
23 a system that is, in fact, substituting signals is
24 not going to know what happened behind the scenes.

25 They're going to know, "Hey, I was

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1 watching Cheers. I turned to the channel that I
2 thought" GN in that case "was on" and would, in
3 fact, market in that fashion in the diary.

4 We have to have records that will let us
5 know sufficiency that, in fact, that system was
6 substituting PIX so the PIX and get the credit for
7 the viewing.

8 We are basing all of our diary editing
9 procedures off from what the system says that it's
10 doing in terms of those types of protection rules.

11 Q And those difficulties did not exist in
12 1989, did they?

13 A Again I'm saying off the top of my head.
14 I don't know what the dates were, but it is
15 something that as a company have had to live with
16 for a very long time.

17 There have been issues in terms of
18 station protection for years and years and years and
19 years. I mean, this is not a new issue in terms of
20 protection.

21 Q The problems associated with the
22 syndicated exclusivity rules, however, really came
23 into being -- the rules became effective in 1990.
24 Isn't that correct?

25 A Again, assuming that that was the date,

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1 then yes, that's correct.

2 Q And when you're referring to what you've
3 been doing for years, you're talking about your
4 efforts to deal with the network non-duplication
5 rules, which had been in effect before that time;
6 correct?

7 A There are any number of instances, and I
8 can't run off -- you know, run them off the top of
9 my head because it's not an area that I did any
10 homework on coming into this proceeding.

11 But there have been many different types
12 of protections through the years. And I would not
13 say that it's restricted to any particular type. I
14 couldn't, in fact, comment in too much depth, in
15 fact, what -- the exact situations for protection
16 might be granted.

17 Q So you don't know, in fact, whether
18 Syndicated programming was protected in the 1989 by
19 FCC rules, do you?

20 A I am saying I am not --

21 Q Okay. Fine. Let me just ask you this
22 here: You're familiar with the term "Syndex-proof
23 superstations"?

24 A Yes, I am.

25 Q What are the Syndex-proof superstations?

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1 A They are stations for which protection
2 does not have to be offered -- against which
3 protection is not offered.

4 Q What are the Syndex-proof superstations,
5 WGN?

6 A Once again, I could not off the top of
7 my head rattle off the list of them.

8 Q There are more than two?

9 A I do not know. I'm not claiming to be a
10 Syndex expert.

11 Q Okay. Well, are you aware of the fact
12 that WGN in Chicago is a Syndex-proof superstation?

13 A I couldn't say definitively one way or
14 another.

15 Q Mr. Lindstrom, assume that WGN
16 broadcasts a program like Cheers in the Chicago
17 market. All of the homes in the Chicago market
18 receive the Cheers program; correct?

19 A That is correct.

20 Q Do you know what a satellite carrier is?

21 A Yes, I do.

22 Q As you understand it, there is a
23 satellite carrier that -- an earth station, looks
24 like a mushroom, but it's really an earth station.
25 The satellite carrier in Chicago receives that

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1 Cheers program in Chicago; correct?

2 A That's correct.

3 Q And then substitutes another program for
4 Cheers and sends that up to the satellite; right?

5 A That is correct.

6 Q So, in other words, they get Cheers here
7 and they black out and put on Abbott and Costello;
8 correct?

9 A I'm not sure what they put on, but I'll
10 take that as a fair example.

11 Q Okay. And then they send Abbott and
12 Costello up to substitute a programming up to
13 satellite; correct?

14 A Correct.

15 Q And then if I'm a cable subscriber in
16 Dubuque, Iowa and I receive WGN, what I recieve is
17 Abbott and Costello; right?

18 A That is correct.

19 Q Now, Cheers, in fact, is broadcast in
20 the Chicago market by WGN, is it not?

21 A Yes, it is.

22 Q And it, in fact, was broadcast by WGN in
23 the Chicago market in 1990; correct?

24 A That's correct.

25 Q And, in fact, it was blacked out by the

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1 satellite carrier before sending it up to the bird
2 in 1990; correct?

3 A That's correct.

4 Q And what you said is you don't know what
5 substitute programming that it presented; correct?

6 A That's correct.

7 Q Now, in the diary-based study that you
8 have done here, am I correct in assuming that no
9 credit is being claimed in that study for viewing to
10 Cheers on WGN?

11 A That is correct.

12 Q Am I also correct in assuming that no
13 credit is being claimed in that study for viewing to
14 the substitute of programming, Abbott and Costello
15 or whatever?

16 A I am not sure. In that case, I would
17 imagine that, in fact, the viewing is.

18 Q It's your belief that if Abbott and
19 Costello were substituted for Cheers by the resale
20 carrier, goes out to the satellite, and is sent out
21 to the cable households, that that viewing would be
22 included in the diary-based study?

23 A I'm trying to think on how that -- I
24 believe so, but I could no swear how that is
25 handled.

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1 MR. GARRETT: Well, could I ask a
2 question of MPAA question just as a technical matter
3 here?

4 CHAIRMAN DAUB: Mr. Lane?

5 MR. GARRETT: Dennis, is the MPAA
6 claiming royalties for this substituted programming,
7 that it's not broadcast in the Chicago market, but
8 simply sent up on satellite?

9 MR. LANE: I don't know that it's
10 included in the viewing, and I don't think Mr.
11 Lindstrom's testimony has indicated that he knows.

12 MR. GARRETT: All right.

13 MR. LANE: Right now I'm unwilling to
14 answer anything about that situation without knowing
15 the facts.

16 MR. GARRETT: Well, I actually had a
17 different question. It wasn't whether it was
18 included in viewing. It was whether or not the MPAA
19 as a legal matter is seeking compensation for the
20 substitute of programming that goes up on satellite.

21 MR. LANE: I've told you that I'm
22 unwilling to answer that question at this moment. I
23 understood what your question was.

24 MR. GARRETT: I see.

25 BY MR. GARRETT:

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1 Q Well, Mr. Lindstrom, do you know how
2 many hours a day of programming on WGN back in 1990
3 were being substituted here by the resale carrier in
4 order to make WGN Syndex-proof?

5 A I do not know.

6 Q And it would not be just Syndicated
7 programs, like Cheers, that would be like that? It
8 would also be Movies on WGN that would be --

9 A Okay. If I could clarify one situation.
10 The reason why I do not particularly recall in that
11 example is I do not necessarily see all of the
12 program-type data. And I have to say in this
13 particular instance, I'm not sure which way that
14 falls.

15 Part of my clarification is that, in
16 fact, that a viewing is coded separately and can be
17 examined separately. Then, that -- in fact, it is
18 not misdcrypted to Cheers or to other areas. Again,
19 how it is exactly handled, I'm not sure.

20 Q Well, were the instructions in your
21 study to not include any viewing to substituted
22 programming?

23 A And I'm saying I do not recall in this
24 particular case.

25 Q Well, who would know the answer to that

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1 question?

2 A I can get an answer by tomorrow.

3 Q Okay.

4 A And from the sounds of it, I would
5 suspect that the answer is that it's been excluded.

6 Q Now, how do you know what programming is
7 being substituted on WGN?

8 A There are any number of available
9 sources for what programming is being offered by GN
10 outside the market.

11 Q Well, what sources were used for
12 purposes of the MPAA study?

13 A Primary sources, generally "TV Data."

14 Q "TV Data" would tell you what
15 programming was being substituted?

16 A "TV Data" is going to tell you what's on
17 GN markets and other markets, yes. We also have our
18 own station records, information. We have the
19 satellite feed data. We are using all sources of
20 information that we have available to us.

21 Q Mr. Lindstrom, over the evening, could
22 you endeavor to determine exactly how Nielsen
23 identified the programming, the substituted
24 programming, on WGN in order to make a decision
25 whether to include or exclude that programming on

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1 the MPAA study?

2 A Well, the question isn't how we know it.
3 Again, we have information from the system. We have
4 information from GN. The question, I suspect, is
5 whether it's included or not.

6 And, again, in examining -- in thinking
7 it through at this point in time, I would have to
8 say again I think probably not.

9 Q Well, I'm going to --

10 A But I can get you a definitive answer.

11 Q I'm going to assume that it was
12 excluded.

13 A And I think --

14 Q And I want to know exactly how you went
15 about determining what programming to exclude. Do
16 you understand that?

17 A Yeah.

18 Q Okay. And, Mr. Lindstrom, let me ask
19 the same question about WWOR, which is also a
20 Syndex-proof superstation.

21 A Okay.

22 Q If I could also ask you the same
23 question about how you did it, both for purposes of
24 the metered study and the diary-based study. Okay?

25 A That's okay.

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1 Q Okay.

2 A I would put one qualifier, too, on this
3 just in terms of with having some of the answers on
4 this, I was prepared in terms of testifying on the
5 peoplemetered data and wasn't sure that -- in fact,
6 didn't expect to be having questions on the diary
7 itself.

8 Q Well, I mean, I can ask you the same
9 questions about the peoplemetered study, Mr.
10 Lindstrom, can't I?

11 A I will get you the specific information.

12 Q I mean, you say that there are these 10
13 million minutes of viewing attributable to distant
14 signal programming in 1990, according to your
15 peoplemeter study; correct?

16 A That is correct.

17 Q And I want to know and I just want to be
18 certain that none of those 10 million minutes were
19 attributable to any kind of substitute programming
20 on WGN, WWOR, or anything else that would be
21 classified as Syndex-proof superstations. Okay?

22 A Yes. But, as I said, it will be a
23 combination of things, like "Sat Guide," et cetera,
24 which are very clear sources on that type of program
25 substitution information.

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1 Q Thank you.

2 Again, in doing both the meter-based
3 study and the diary-based study here for MPAA in
4 1990, dealing with the substitute program was not an
5 issue that you had to deal with in doing the 1989
6 study; correct?

7 A That is correct.

8 Q Mr. Lindstrom, let me just go back for a
9 moment to your testimony about the buckets. Do you
10 recall that?

11 A Yeah.

12 Q Would you explain again exactly how it
13 is you determined which minutes to credit to which
14 programming in your meter-based study?

15 A Could you repeat that question again?

16 Q I don't think I could.

17 A Or something similar.

18 Q Well, you said that this was explained
19 to you on Page 8 of your prepared statement. Do you
20 see that? Page 8, second paragraph, under
21 "Aggregation of Viewing Data."

22 A Okay. I see it.

23 Q Could you just explain to me once again
24 what's happening there?

25 A We're going through for each station.

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1 We're identifying the time periods on the station
2 that correspond to each program. And the program,
3 the time -- the program categorization is done, and
4 the program categorization is affixed to the time
5 periods. And the time periods are placed into
6 buckets responding to the program type that they
7 have been categorized by.

8 Again, PIX 8:00 to 10:00 classified as a
9 Movie, goes into the Movie and Syndication bucket
10 those time periods, and then minutes are aggregated.

11 Q Let's just stick with WPIX for a minute
12 here. How do you determine the particular time
13 periods with which you associate particular program
14 categories?

15 A I'm not sure if I'm following the
16 question, but if you're saying how do we know what
17 times to associate with what programs, we are using
18 a variety of sources, the key one being "TV Data."

19 Q And you break this down on a quarter
20 hour by quarter hour basis?

21 A It's actually done on a minute basis,
22 but quarter hours is a reasonable set of parameters
23 to assume.

24 Q Well, is "TV Data" giving us: Okay. On
25 WPIX on Monday, July 17th, there was a movie that

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1 ran between the hours of 8:00 and 10:00?

2 A Correct.

3 Q Okay. And they will then say on
4 Tuesday, July 18th, there was a Yankees game that
5 ran between the hours of 8:00 and 10:00. Assume
6 that.

7 A Correct.

8 Q What do you do with that information
9 then?

10 A The movie gets classified as Syndicated
11 or Movies. That time period, PIX Monday, 8:00 to
12 10:00 for that particular day is put into the
13 Syndicated bucket.

14 And then the same thing: On Tuesday
15 when it's Sports 8:00 to 10:00, that gets placed
16 into the appropriate Sports bucket.

17 Q So if "TV Data" tells you, then, that
18 the Yankees game was aired 8:00 to 10:00 Tuesday,
19 July 18th, you then would query the computer? It
20 would tell us all households were watching that
21 particular station, WPIX, during the period 8:00 to
22 10:00?

23 A That is correct.

24 Q And they would come in, and they would
25 say that there were 100 households around the

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1 country that were watching WPIX between the hours of
2 8:00 and 10:00 on Tuesday, July 18th; right?

3 A That is correct.

4 Q And you would then take the 100
5 households and multiply by the 120 minutes; correct?

6 A More or less. I mean, it's -- but
7 that's basically the way the calculation is
8 computed.

9 Q And then those 120 minutes times 100
10 households would all go into calculating the 10
11 million households that you testified to earlier?

12 A That's correct. I mean, it's -- the
13 reason I was classifying that is it is not that
14 somebody who views is going to get 120 minutes of
15 viewing. If they watch six minutes, they would get
16 credited for six minutes. If they watch for 15,
17 they would get 15. If they watch for 120, they
18 would get 120. It's not based on the duration of
19 the program.

20 Assuming that they watched the entire
21 2-hour block, they would get a 120-minute
22 categorization. And so it is summed on an
23 individual household basis.

24 Q What you'll tell us tomorrow is how you
25 would deal with the situation where the program is

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1 being substituted?

2 A That is correct.

3 Q How you got that. Okay.

4 MR. GARRETT: Madam Chairman, I really
5 don't have any other questions that I can ask at
6 this point until he comes back with the additional
7 information.

8 CHAIRMAN DAUB: Thank you, Mr. Garrett.
9 Any questions of Mr. Lindstrom from the
10 bench?

11 COMMISSIONER DAMICH: I do have one
12 clarification question, and that is: You could then
13 generate station by station and program by program
14 information? Your point, though, is that when it
15 goes into the buckets, that the sample is so small
16 that it's unreliable?

17 THE WITNESS: Right. What can be done
18 and what should be done are kind of two different
19 things. We clearly could generate the data on that
20 level, but in looking at it, I can say offhand that
21 for a great number of the stations, you will be
22 likely to find all kinds of funny things occurring
23 simply because you have small sample sizes and
24 individual people watch television in all kinds of
25 different ways.

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1 And I think that it is likely that what
2 can occur is that disaggregate information is then
3 looked at and pointed at and said, "Well, look, you
4 know, can you -- how do you explain the fact that
5 this data looks so funny for this station and
6 program?"

7 We're saying, "Well, it looks that way
8 because the sample size is so small." You can't
9 look at it reliably on that level, and we've never
10 said that you could, that you have to build it to
11 the aggregate level to make it make sense.

12 So it's not that it couldn't be
13 generated. It could be. It would, in fact, take a
14 good amount of work to do it, and it is a lot of
15 processing. There's much more data that has to be
16 run than is currently run for the exhibits that we
17 presented here.

18 But, as I have said several times, I
19 just don't think that it should be looked at because
20 I don't think it can do anything but mislead in
21 terms of trying to figure out anything about the
22 data or the information that's in there.

23 CHAIRMAN DAUB: Mr. Garrett?

24 MR. GARRETT: Just one follow-up
25 question, if I may?

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FURTHER CROSS-EXAMINATION

BY MR. GARRETT:

Q Mr. Lindstrom, you've got this 10 million-minute figure here. Can you tell us of those 10 million minutes how many minutes were spent viewing Yankees games on WPIX and how many were spent viewing the Syndicated Series on WPIX?

A I can't based off of what has currently been run. What can be run is different, and it is possible to run data of that kind, although, once again, we don't think that for the vast majority of the stations that the sample sizes are sufficient.

Q Could you at least confirm, for example, that there was no viewing to Abbott and Costello that was included in those 10 million minutes?

A That can be confirmed by checking the data -- the time periods that, in fact, are included in the study.

Q Do you have a separate document that shows exactly which time period were included in the study for every program?

A For every bucket, yes.

Q Now, is that something we can request, get access to?

A I don't have a problem with that.

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1 That's simply the program categorizations.

2 Q I would like to make a request for that.
3 Is that something you could provide us this evening?

4 A I do not have that existing in my hands
5 by any means. I'm not sure if the MPAA has it. And
6 if I had to get a hold of it at this point in time,
7 I don't think that I could get it for a couple of
8 days.

9 CHAIRMAN DAUB: Are you referring to a
10 draft chart, "TV Data"?

11 THE WITNESS: No. Simply a -- I believe
12 what Mr. Garrett is requesting is a listing of the
13 programs that went into each bucket, basically a
14 listing of the schedules for each station saying:
15 Where were each of these things classified?

16 CHAIRMAN DAUB: Mr. Hester, is this a
17 similar material that you were asking for in your
18 motion?

19 MR. HESTER: Well, Madam Chairman, it's
20 somewhat different. What we're asking for is the
21 information on viewing hours that were attributed to
22 each of the programs by station, which is similar to
23 what has been produced for the diary study. And
24 that's what we're interested in.

25 CHAIRMAN DAUB: Thank you.

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1 MR. GARRETT: And we have requested the
2 same thing, Madam Chairman. I think Mr. Hester is
3 correct in saying this is something a little bit
4 different.

5 MR. STEWART: This is exactly what we
6 requested, and we were told that we would be
7 provided it. We haven't yet received it. That is,
8 what Mr. Lindstrom has described is something that
9 requested to have access to before his testimony.

10 CHAIRMAN DAUB: Thank you.

11 Commissioner?

12 COMMISSIONER GOODMAN: I have one more
13 question directing your attention to Page 6 of your
14 testimony, Mr. Lindstrom, in the 1989 proceeding.

15 THE WITNESS: Okay.

16 COMMISSIONER GOODMAN: In that last
17 sentence before the last paragraph, in which you
18 indicated that you eliminated meters due to
19 insufficient sample sizes to produce reliable data
20 of the type required, --

21 THE WITNESS: Yes.

22 COMMISSIONER GOODMAN: -- do you recall
23 what the sample size was in 1989?

24 THE WITNESS: For use with the
25 peoplemeter, it would have been the same size

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1 approximately.

2 COMMISSIONER GOODMAN: Same size as?

3 THE WITNESS: As it is for the data that
4 we have submitted. As I said, in that part, it's my
5 belief that the reference is concerning the dual
6 uses that were proposed to us by the MPAA. And,
7 therefore, the sample was insufficient for the need
8 to do the second phase of their participants, not
9 that it would be insufficient to generate the
10 categorized data of the type that we're producing
11 here.

12 So that the overall sample size is the
13 same, but it's actually referencing two different
14 types of studies and saying in one case it would
15 have been and one case it wouldn't be.

16 COMMISSIONER GOODMAN: Thank you.

17 CHAIRMAN DAUB: Mr. Lane?

18 MR. LANE: If I could just ask Mr.
19 Lindstrom a question to clarify Commissioner
20 Goodman's?

21 REDIRECT EXAMINATION

22 BY MR. LANE:

23 Q When you're saying "insufficient sample
24 size to produce reliable data of the type required,"
25 would it be the same to say insufficient sample size

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1 to produce reliable data of individual programs or
2 individual station information?

3 A That is correct.

4 CHAIRMAN DAUB: Thank you, Mr. Lane.

5 Any other questions?

6 (No response.)

7 CHAIRMAN DAUB: Mr. Lindstrom, I hope
8 you do not have many jobs that require all day
9 sitting being grilled too often. We will close --

10 COMMISSIONER DAMICH: Do you want to ask
11 about the motions?

12 CHAIRMAN DAUB: For the record, on the
13 record?

14 COMMISSIONER DAMICH: Yes.

15 CHAIRMAN DAUB: This is once again with
16 regard to PBS' motion for Program Suppliers to
17 compel certain materials behind peoplemeter. We
18 would like both counsel to clarify just what are the
19 materials that were provided thus far and what are
20 remaining.

21 And my understanding prior to lunch --
22 prior to lunch?

23 COMMISSIONER GOODMAN: Prior to our last
24 break.

25 CHAIRMAN DAUB: -- was that some of the

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1 materials were provided and that remaining, from our
2 understanding, is either Program Suppliers' refusal
3 to comply or unable to comply.

4 And so if that was the case -- thank
5 you, Mr. Lindstrom.

6 (Whereupon, the witness was excused.)

7 CHAIRMAN DAUB: That being the case, in
8 the interest of time, rather than dragging it on, we
9 would like to be able to have this resolved. Is
10 that my understanding from both of you, that --

11 COMMISSIONER GOODMAN: Let me slightly
12 rephrase it. Initially I would like to know what
13 the status is if you can proceed from there.

14 CHAIRMAN DAUB: Okay. Well, Mr. Lane,
15 you have alluded that some of the materials that
16 were requested, that you have already provided.
17 Sorry.

18 MR. LANE: I think I will let Mr. Hester
19 answer as to what has been provided.

20 MR. HESTER: Okay. In the first part of
21 our motion to compel discovery, we had four numbered
22 points, all of them relating to the peplemeter
23 households.

24 As I understand it, we have now received
25 from MPAA the first two numbered points. The first

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1 point was the percentage or number of peoplemeter
2 households that receive cable television.

3 I understand we have received that. I
4 can't vouch for this because I haven't been looking
5 at some of this discovery myself, but I understand
6 this.

7 MR. LANE: Mr. Lindstrom testified
8 during today of what those numbers were.

9 MR. HESTER: Second number, the
10 percentage or number of peoplemeter households that
11 reported any distant signal viewing in the meter
12 study, I think, either we have received that in
13 discovery or Mr. Lindstrom may have given it today.
14 So those two I think are clear now.

15 The third was the percentage of the
16 number of peoplemeter households that receive on a
17 distant basis Public Television stations,
18 independent stations, and network stations.

19 Mr. Lindstrom has indicated that he
20 could get those figures for independent stations and
21 network stations during his testimony, you may
22 recall he gave the number for Public Television
23 stations.

24 So as to the third, I think that that is
25 going to be satisfied as well within the next day.

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1 That leaves open this question about our request for
2 the locations by county of the peoplemeter
3 households and the number of peoplemeter households
4 in any given county.

5 That request is still pending. It was
6 included in the Tribunal's order granting our motion
7 to compel discovery, and I gather that that's one on
8 which MPAA is refusing to provide an answer.

9 CHAIRMAN DAUB: As for this particular
10 Commissioner, Mr. Lindstrom did indicate for the
11 reasons of confidentiality, that they try to guard
12 those locations for their business purposes.

13 Now, of course, that's my understanding.
14 And if, in fact, that is the reason for their
15 refusal or at least Nielsen's refusal to reveal,
16 that nothing is forthcoming with regard to the
17 request, if that is the case, our ruling was to go
18 against the weight of the matter. Is that correct?

19 COMMISSIONER GOODMAN: Yes, but I think
20 that Mr. Lane had indicated that he was prepared to
21 either file or make a motion for reconsideration.
22 And during the break, we suggested that it might be
23 appropriate for him to present that orally at the
24 conclusion of today's proceeding, that we might be
25 able to respond this morning to it.

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1 CHAIRMAN DAUB: It must have been
2 absent. That's when I went out to the girls' room.

3 Thank you, Mr. Hester.

4 Mr. Lane?

5 COMMISSIONER DAMICH: I have a question.
6 When you say "location by county," what kind of
7 information do you mean in location?

8 MR. HESTER: In other words, we would
9 like to know which counties in the United States
10 have these peoplemeter households in them at all.
11 And then within a given county that has any
12 peoplemeter households, we would like to know how
13 many there are.

14 And it bears quite directly on the
15 viewing results as to Public Television, at the very
16 least, because there could be many counties where
17 our distant signal is being retransmitted and
18 there's no peoplemeter picking it up or that's what
19 we'd like to examine.

20 CHAIRMAN DAUB: Thank you, Mr. Hester.
21 Mr. Lane?

22 MR. LANE: At this time I would like to
23 move orally for reconsideration of your order in
24 which you granted certain discovery requests. Part
25 of it is moot now, as you heard, or will be moot as

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1 soon as we can get additional information.

2 Mr. Lindstrom has testified as to the
3 strong need for confidentiality related to those
4 counties because it could unduly influence the
5 households in the sample and, therefore, unduly
6 influence the results and, in fact, completely
7 invalidate the entire peoplemeter study at great
8 expense, not only to Nielsen, but to the entire
9 industry because they would have no rating services.

10 I would also point out that the Tribunal
11 has overruled our request for access to the
12 unredacted Board studies based on confidentiality,
13 which was in large part based on an affidavit
14 presented by Mr. Trottman in which he said if -- he
15 didn't even say everybody had asked for
16 confidential. He said if they asked, they would be
17 told this would be confidential.

18 And based on that, you denied our motion
19 to get that information. So I would suggest that
20 you have made a very clear ruling that even what I
21 consider an extremely minimal level of
22 confidentiality would protect documents from being
23 discovered.

24 And I would suggest to you that the
25 level of confidentiality with regard to the request

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1 about counties is significantly higher than it was
2 in the case of the Board study.

3 And, therefore, to be consistent, you
4 would have to rule in our favor about the
5 confidentiality of the counties.

6 MR. LINDSTROM: I don't know
7 procedurally if I can say something or not. So you
8 can tell me. I have no idea what the formalities
9 are.

10 CHAIRMAN DAUB: You may proceed.

11 MR. LINDSTROM: The one thing that I
12 would like to point out is that being a syndicated
13 service, that --

14 MR. GARRETT: Excuse me. Paul, you're
15 going to have to come up to the microphone if you
16 want to say something.

17 Whereupon,

18 PAUL LINDSTROM
19 was recalled as a witness by counsel for MPAA and,
20 having been previously duly sworn, resumed the
21 witness stand, was further examined and testified
22 further as follows:

23 THE WITNESS: Being a syndicated
24 service, we have multiple users who are always
25 interested in investigating whether we do what we

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1 say we do. And we print booklets every year, one of
2 which is the reference supplement that's been
3 submitted. And people have copies of detailing
4 exactly what we do in our procedures and in defining
5 the sample.

6 The point that I was going to make is
7 that we are also audited by the EMRC, which is an
8 independent group that is specifically designed to
9 ensure that we do what we say we do, so that it's
10 not a matter of saying, "Well, we take a random
11 sample of these counties and then do something
12 different." They are there to, in fact, ensure that
13 those procedures are followed and to be able to
14 assure our clients that they are.

15 The question then comes to you can
16 either believe in sampling or not, that a random
17 sampling of counties will produce an adequate sample
18 to determine the viewing, but that I do believe that
19 the kind of seal of approval that's provided by the
20 EMRC is beyond what you will find on any proprietary
21 research that's done by any company, including
22 ourselves.

23 I mean, we don't have that same kind of
24 seal of approval on the custom work that's done, but
25 I do think that that should give an added weight to

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1 the credence of the procedures that have been
2 followed.

3 MR. HESTER: I don't dispute any of what
4 Mr. Lindstrom says. I would just respectfully
5 submit that what is being done with these
6 peoplemeters here is somewhat different from
7 anything they sell to anybody and that you shouldn't
8 be too swayed by these accreditation concepts when
9 they're purporting to do something a little
10 differently with their study here. They're taking a
11 set of stations and looking at where those stations
12 are being distantly retransmitted.

13 And it strikes me it goes right to the
14 heart of the validity of these results, as to us
15 anyway, to be able to know what counties are
16 included in their sample. And there's no way for us
17 to get behind their results and to assess whether
18 their results are fair or not as to us unless we
19 have these data.

20 I would submit that that's what makes it
21 a little different from the MPAA request for the
22 unredacted Board's questionnaires because I don't
23 see way the identity of the respondents has much, if
24 anything, to do with the heart of the matter. This
25 does.

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1 And there was a choice made by Nielsen
2 to inject itself into this case as MPAA's consultant
3 to prepare the study. And that's what comes with
4 the territory, I would submit.

5 We're willing to provide by any
6 protective orders that are reasonable. I'm not in
7 the business, and I don't see why outside counsel
8 shouldn't have access to these sorts of data at a
9 minimum.

10 CHAIRMAN DAUB: Thank you, Mr. Hester.

11 Mr. Lindstrom, since you're back on the
12 stand, something similar to the confidential
13 agreement that you've entered with Joint Sports,
14 perhaps to PBS counsel alone or if he would agree to
15 sign such an agreement, you can appreciate the
16 dilemma or the frustration that they must be feeling
17 not able to properly cross-examine the study that's
18 been presented before us here.

19 Is it at all conceivable that if he
20 would sign such an agreement of confidentiality,
21 that such information could be provided? As he had
22 stated, he's not in the business to hype up ratings
23 nor to inject or influence ratings in any way.

24 MR. LANE: Madam Chairman, could I just
25 address that for a minute?

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1 CHAIRMAN DAUB: Please.

2 MR. LANE: We specifically stated we
3 were willing to enter a confidentiality agreement
4 with regard to the unredacted Board study. And,
5 contrary to what Mr. Hester thinks, we do have very
6 good reasons, which we obviously do not want to
7 reveal, for getting that information.

8 We think it goes to the heart of those
9 studies, and you still denied it. And I think
10 before you ask a question like this of Mr.
11 Lindstrom, which would suggest that that is a key
12 factor, that you should consider your ruling when we
13 had volunteered that we would enter a confidential
14 agreement and you still denied our motion.

15 So I would suggest to you that you
16 before you even ask this question of Mr. Lindstrom,
17 that you decide what you're going to do.

18 COMMISSIONER DAMICH: Well, I think the
19 reason why Commissioner Daub asked the question is
20 because she thinks that your situation is so
21 distinguishable.

22 MR. LANE: Well, if you will tell me,
23 Commissioner Damich, for my edification, why one
24 party can get allegedly confidential information
25 when it is entering an agreement and another party

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1 cannot, then I would be happy to know. I don't see
2 the distinction.

3 COMMISSIONER DAMICH: I suspect the
4 reason is that we thought the information was
5 extraordinarily relevant in this case with Mr.
6 Lindstrom, and there was no showing or not an
7 adequate showing of relevance in the other.

8 But I have a question, actually, of Mr.
9 Lindstrom. If you could in elementary fashion
10 clarify for me once again what the danger is of this
11 information becoming public?

12 THE WITNESS: The danger is really
13 multi-fold. And I would put two qualifiers on it.
14 One is that once we let out any information of this
15 kind, we have already opened up the barn door, and
16 the horse is out.

17 We have a very interesting, and I think
18 should be understood, in protecting that
19 confidentiality of any location. And once you say,
20 "Well, okay. We'll supply the counties," then
21 what's to separate that from the cable systems that
22 they're on or the blocks that they're within or any
23 number of factors.

24 It just becomes much harder for us to
25 protect that if we start saying that this is an

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1 exception because everyone historically who has
2 tried to get that has a reason why they, in fact,
3 are the exception and need to get it. And we do get
4 requests constantly.

5 The second is that using an example, and
6 a very clear-cut one, of the counties, that -- and
7 there is information within the reference supplement
8 in terms of how many counties do have meters in them
9 and how many do not and the procedures for what's
10 definitively included.

11 And, in fact, 70 percent of the
12 population of the U.S. lives in counties which are
13 selected with certainty to be in that sample when
14 you're dealing with a smaller percentage that
15 doesn't fall into that.

16 But even at that, if you're in a spot
17 where you can target what counties have homes in
18 them and what don't, it's very easy to attempt to
19 influence the television marketplace simply in terms
20 of selectively advertising or targeting marketing as
21 one case saying "Well, if I don't have to send it
22 to" -- you know, using the extreme, "I don't have to
23 send it to 30 percent of the country," it's not that
24 high, but using that, if you can target down to 70
25 percent and that's all you need to advertise your

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1 programming to, then certainly people will do it as
2 a way of trying to influence ratings data.

3 To say that people won't just isn't so.
4 I don't believe that people individually in this
5 room would, but clearly there have been any number
6 of instances through the years of people who attempt
7 to try to influence the Nielsen ratings in all kinds
8 of different fashions.

9 And it really is the core of our
10 business that we have had issues of confidentiality
11 in terms of home by home data, which Mr. Garrett
12 will be introducing. And, in part, that goes to the
13 heart of some of the value of our information and
14 compensation for it, et cetera, where the
15 confidentiality of the homes as the possibility of,
16 in effect, breaching our entire business once it's
17 opened up.

18 As an aside, I do think that one, part
19 of the issue is how many homes could receive these,
20 and whether enough homes could, and we are saying
21 that in fact not only could at least 286 of the
22 homes received homes, they've viewed them. That
23 based on the percentages, we would expect that the
24 percentages of people who could actually receive
25 them are substantially higher.

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1 And secondly, I do believe, and I would
2 offer, that there would be some form of compromise
3 in terms of checking distributions in some aggregate
4 form. You know, I don't know what that would be,
5 but what percentages of your home fall in C county
6 sizes, or some sort of mass group of counties that
7 the PBS representatives feel that their distance
8 subscribers should be coming from, or whatever form
9 they would be attempting to look at the counties in
10 order to match and try and test the validity that,
11 until you aggregate the information, it is difficult
12 to, in fact, make sense of --

13 You know? What I'm saying, is that if
14 you go in, you say, "Here, we're in these 600
15 counties, and we're not in these 300, well, what
16 does that mean?" Well, it doesn't mean you can't
17 look at each county individually. You have to
18 aggregate it in some fashion. And I would think
19 that it would be possible, again, possibly for the
20 PBS people to come up with an aggregated form that
21 we could supply.

22 That's kind of a roundabout answer. But
23 saying that, you know, we are not trying to
24 stonewall, but simply saying this is a very key
25 factor, that I do know that we would not make an

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1 exception on, and haven't. And because of that
2 we've been able to protect ourselves from having to
3 do it in other instances, and to protect ourselves
4 without having to do it in the future.

5 COMMISSIONER DAMICH: No. I appreciate
6 that, because clearly, we want to protect
7 confidentiality. But, as you understand, it's easy
8 to allege confidentiality merely to avoid providing
9 the information.

10 And therefore we have to -- at least I
11 feel that I would like to have an explanation, or to
12 make that decision to see whether or not
13 everything's correct.

14 MR. HESTER: Some of his adventurous
15 remarks actually provide the segue into the other
16 unanswered point about our discovery motion, and
17 this is our request for results by station, and by
18 program. And that is not the same as the issue
19 we've been discussing, but it's clearly related.

20 Because again, for us, the only way to
21 make sense out of these aggregated results is to go
22 back and look behind them, to see what the results
23 are underlying these aggregated figures at some more
24 disaggregated level. And again, we submit we need
25 that.

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1 We've heard today from Mr. Lindstrom as
2 to why he views these data as unreliable, I would
3 submit that's his explanation, and perfectly
4 reasonable rationalization. But that shouldn't
5 block our discovery of this information. We ought
6 to be entitled to look at it, and make our own
7 judgments about what, if anything, we do with those
8 data.

9 And it does relate to this other issue
10 about the distribution of the Peoplemeter
11 households. Because until we see what the distant
12 viewing figure are for individual stations, there's
13 no way for us to assess whether there's some
14 systematic bias in the way our distant viewing is
15 measured.

16 COMMISSIONER GOODMAN: Is that issue
17 unresolved?

18 MR. HESTER: Well, it is, because that
19 was the second half of our discovery motion, was a
20 request for a printout essentially similar to what
21 MPAA has provided for the diary study. And it's a
22 printout that would show the results by program and
23 by station, as have been provided for the diary
24 study. And that is also being refused.

25 COMMISSIONER DAMICH: We had granted

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1 them, though, didn't we? We granted them.

2 MR. HESTER: Yes. You granted -- you
3 granted the motion to compel.

4 COMMISSIONER GOODMAN: I'm -- I thought
5 there were four issues, and the first -- those four
6 issues, two of the documents requested had been
7 furnished either orally or in writing, one of them
8 was in the mail, and the four one, as I said, was a
9 motion for reconsideration. Where does this fit?

10 MR. HESTER: I'm sorry. I didn't
11 present this very well to you at the outset. There
12 were two parts of our motion to compel. The four
13 numbered items that we spoke about and that I ran
14 through were the first part of the motion to compel.

15 There is a second part of the motion to
16 compel which was also granted, that required the
17 production of information on stations and programs.
18 And I must say, it's difficult for us even to try to
19 formulate a compromise until we have most --

20 COMMISSIONER GOODMAN: Mr. Lindstrom,
21 what's the position of building suppliers on, I
22 guess, the second half of that issue.

23 MR. LANE: I indicated that I would file
24 a motion for reconsideration, based on what Mr.
25 Lindstrom testified to that.

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1 COMMISSIONER DAMICH: This is on the
2 station by station, program by program point?

3 MR. LANE: Right. Correct.

4 MR. LINDSTROM: If I could raise one
5 other point that I think needs to be taken into
6 consideration, is that this is a major job. You're
7 talking about ratings on probably close to a million
8 programs.

9 And one, it's going to cost a lot of
10 money. And I'm not sure who it is being suggested
11 should pay for that. And it is also going to take a
12 good amount of time. I mean, this is not a small
13 request like could we find out what happened with
14 Abbot and Costello, which clearly could be done, and
15 could be done in a reasonable period of time.

16 But to try and look, and to generate the
17 type of volume, even to get set up, to generate the
18 type of volume that's being requested here, as I
19 said, will take a lot of time, and will take a
20 substantial amount of money to generate it.

21 COMMISSIONER GOODMAN: Do you have a
22 ballpark on the time?

23 THE WITNESS: I would say possibly a
24 month, if we were lucky. I mean, this is --

25 COMMISSIONER GOODMAN: Is there a

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1 possibility you and Mr. Lane might discuss the
2 possibility of --

3 THE WITNESS: This is just an off of --

4 COMMISSIONER GOODMAN: -- a compromise
5 on your request? I mean, you heard what you said.
6 It's going to take a month. We granted that motion,
7 I understand, a motion for reconsideration could be
8 made subsequently but, since the current status is
9 that the motion is granted, and the witness is
10 stating that even if he were going to comply with
11 the motion, it probably would take a month, and it
12 will cost somebody a lot of money.

13 THE WITNESS: I would also say that I am
14 really talking probably a month minimum. I just
15 want to be very up front, in terms of this is a very
16 substantial -- substantial job.

17 MR. GARRETT: Madam Chairman, let me
18 just add that we also had requested the same data
19 here back in August. And the fact that it wasn't
20 provided as part of the -- case, the fact that we
21 didn't get any response on -- on the existence,
22 even, of these kind of data here until a week or so
23 ago, all form the basis of our motion to strike Mr.
24 Lindstrom's testimony, which you have now denied.

25 And we still maintain that is the kind

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1 of data that should have been presented. It should
2 have been presented a while ago. The fact that it
3 has not been presented up to this point here, it
4 really makes it impossible for us to put together
5 any kind of effective rebuttal case on this point,
6 or to, you know, cross examine it, it's going to
7 take another month, okay?

8 But I don't want to leave us out here in
9 terms of who's going to be doing the negotiating
10 what's a fair compromise here. I mean, this is
11 clearly something that is of interesting to the
12 Sports Claimants, as well.

13 CHAIRMAN DAUB: Mr. Hester had
14 something.

15 MR. HESTER: Well, I would say, I had
16 never heard this figure of a month. It's possible
17 that MPAA's counsel has mentioned the expense, but I
18 had mostly heard about irrelevancy until just now.

19 So I really haven't had a chance to go
20 back and scratch my head about these parameters. I
21 raise it in part to say it's doubly difficult for us
22 without these county by county data that we're
23 asking for, because we also don't have any
24 disaggregated information about any of the results
25 station by station.

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1 And the whole study is built up from the
2 bottom. I mean, it ends up with an aggregated
3 number, but it is built from individual
4 observations. And we don't have any at this point.

5 CHAIRMAN DAUB: Mr. Lindstrom, has
6 Nielsen ever done program by program Peoplemeter
7 studies for any of their clients?

8 THE WITNESS: We do program by program
9 data all the time. The question really comes down
10 to the number of homes that can receive a given
11 station.

12 So that we, for instance, WTBS and WGN,
13 those types of stations, both program by program
14 data, not only is available, but we issue in
15 reports. There -- I mean, there are qualifiers
16 included which I won't go into at this point.

17 But I mean the point is that even, you
18 know, signals like those which have wide
19 distributions we can and do report. The issue that
20 it comes down to is when you're getting into very
21 small numbers in terms of the number of cable subs
22 that have access to a different given station, it is
23 very important to be able to aggregate them, to
24 build up the base to a sufficient level.

25 And that's why I tried to use the point

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1 of five households, and saying, well you know, it's
2 really important for us to look at these groups of
3 five homes to determine whether the national
4 Peoplemeter numbers are any good.

5 I'm saying well clearly you can't do
6 that, because a group of five homes could show you
7 anything. It is only as those five groups of five
8 homes are built up to a large enough amount that you
9 are kind of averaging out the anomalies and other
10 factors that can go in, that your results really
11 become stabilized.

12 That's the reason for large samples, to
13 say, you know, quirky things will happen without
14 them. I mean, it is just the given in that it has
15 to be -- it really needs to be built up
16 sufficiently, and our minimum supporting standards
17 are generally, and they are published, for
18 individual day data the equivalent of around 200
19 homes.

20 I think that there are probably many of
21 the stations, and I could look at Mr. Cooper's
22 written testimony, in terms of the counts, I don't
23 recall offhand, but there are very low count
24 stations that are included in there. And they had
25 to be in order to make the data projectable to all

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1 stations with distant carriage.

2 So you can't kind of have it both ways,
3 where they need to include them or not. But if
4 you're going to include them and have them
5 represented, then it is very clear that you will
6 have only small numbers of homes that can receive
7 them, and therefore, you know, wouldn't look at them
8 on that individual station basis.

9 And as I said, I would keep reiterating,
10 because I think it's important, that the risk that's
11 run is by looking at the information on too small a
12 basis. Then, you can only make the observation, or,
13 I can't say only, but one of the key things is to
14 say either it makes sense, or it doesn't.

15 But a good deal of it won't make sense.
16 And it'll be very easy to, in fact, say, "Look it,"
17 you know. But it -- but it can't be justified on
18 those levels.

19 COMMISSIONER GOODMAN: Let me suggest a
20 couple things. One is that I think that PBS's
21 answer as given there doesn't hinge on whether or
22 not they wish to defer to you, as to whether it
23 makes sense or doesn't make sense.

24 Having said that, I think that many
25 things that Mr. Lane said and you said are not

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1 frivolous, in terms of the delay, the expense. And
2 on the other hand, we have granted the motion for
3 the information.

4 This cries out for accommodation of some
5 sort. And perhaps, Mr. Hester, you're scratching
6 your head. You might scratch Mr. Garrett's
7 (Laughter) and include him in their considerations.
8 But I know that this Commission would greatly
9 appreciate you coming back to us tomorrow with a
10 modified request that it's at least doable even if
11 not attractive to MBAA.

12 CHAIRMAN DAUB: Mr. Garret?

13 MR. GARRETT: If we're done with that
14 topic, I have just one post hearing matter to raise.
15 Madame Chairman, at the outset of these proceedings,
16 recognizing the time constraints, and that time is
17 really of the essence in these proceedings, whenever
18 we made a filing with the Tribunal, we would FAX
19 copies to at least the counsel of who it was
20 directed to.

21 And we did that for a while, and we kept
22 getting things back in the mail. And you know, when
23 that happens, you lose a day or two, and that fact
24 is significant, given the time schedules here.

25 I would just make the proposals here

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1 that henceforth in this proceeding, when anyone is
2 filing something with the Tribunal, if they could
3 serve it on all counsel. I mean, there's only four
4 or five of us I think that are the principal counsel
5 here that it has to be served on. And if they could
6 do that by FAX, we're certainly happy to
7 reciprocate.

8 And I say that only in the interest of
9 being able to turn around quick responses. The fact
10 that I own stock in Bell Atlantic has nothing to do
11 with it.

12 CHAIRMAN DAUB: Well, that certainly is
13 agreeable with the Tribunal, is it's agreeable with
14 the rest of the counsel. Mr. Stewart?

15 MR. STEWART: Can we be specific, that
16 the service list that exists now remains in place
17 for mail service, but that perhaps one lead counsel
18 from each of the parties that are active in the
19 proceeding be served by FAX. I'd like not to drop
20 off all the other names that we serve by mail.

21 CHAIRMAN DAUB: You're saying five of
22 you would be getting via facsimile, and the rest by
23 mail.

24 MR. CAMPANELLI: Madame Chairman, we
25 would appreciate it if, since the three of us were

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1 together, the three of us could all be served.

2 Thank you.

3 CHAIRMAN DAUB: That makes them seven.

4 Mr. Lane, any objections?

5 MR. LANE: I have no objection.

6 MR. HESTER: That's fine by us, too.

7 CHAIRMAN DAUB: Thank you. Mr. Lane,
8 you have indicated that you would file a motion for
9 reconsideration on this very subject --

10 MR. LANE: Correct.

11 CHAIRMAN DAUB: -- matter we've been
12 discussing the last half hour. Do you have any idea
13 as to when you might be able to file?

14 MR. LANE: The next day or two.

15 COMMISSIONER GOODMAN: Well, hopefully
16 it will be mooted out, because everybody will have
17 agree by tomorrow morning.

18 MR. HESTER: We will at least try to
19 come up with some compromise.

20 CHAIRMAN DAUB: Thank you. We
21 appreciate it, Mr. Hester.

22 The meeting is adjourned today, and we
23 will reconvene at 10:00 tomorrow morning.

24 (Whereupon, the hearing was adjourned at
25 4:40 p.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript
in the matter of: 1990 CABLE COPYRIGHT ROYALTY DISTRIBUTION
PROCEEDING - DOCKET NO. CRT 92-1-90CD

Before: COPYRIGHT ROYALTY TRIBUNAL

Date: SEPTEMBER 8, 1993

Place: WASHINGTON, D.C.

represents the full and complete proceedings of the
aforementioned matter, as reported and reduced to type-
writing.

Phyllis Young

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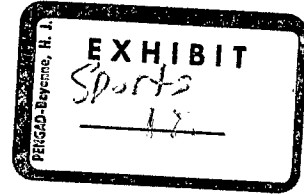
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Nielsen

Nielsen Plaza, Northbrook, IL 60062-6288
708-498-6300

LAW DEPARTMENT



VIA FAX

July 2, 1993

Robert Alan Garrett, Esq.
Arnold & Porter
1200 New Hampshire Ave. N.W.
Washington, D.C. 20036

Re: 1990 Cable Royalty Distribution Proceedings ("Proceeding")

Dear Bob:

In the course of Mr. Lindstrom's deposition on June 30, you asked that Nielsen inform you as to the terms and conditions under which it would be willing to provide to Major League Baseball, the National Basketball Association, the National Hockey League and the National Collegiate Athletic Association (collectively, "JSC") certain Nielsen-proprietary "home by home" information relating to two programs ("Nielsen Information") on which reports provided to MPAA were based.

The two programs in question are to be selected by JSC. JSC should provide its selection directly to Mr. Lindstrom. The details of the Nielsen Information to be provided will be finalized between JSC and Mr. Lindstrom, who will then also provide JSC with an estimated timing of delivery and Nielsen charges therefor.

The terms and conditions under which Nielsen is willing to provide the Nielsen Information are as follows:

1. Nielsen will not provide any Nielsen Information which may, in Nielsen's judgment, result in the possible disclosure of the identity of any Nielsen sample households.
2. JSC each acknowledges Nielsen is the owner of all rights in and to the Nielsen Information (including, but not limited to, all copyrights), which rights are in no way waived or affected by the provision thereof to JSC, subject only to the limited rights expressly granted herein.

A.C. Nielsen

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Robert Alan Garrett, Esq.

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3. Nielsen grants to JSC a license to use, copy and disclose the Nielsen Information as expressly provided herein, and JSC each agrees to not use, copy or disclose any Nielsen Information, or any work product thereof, except as so expressly provided.

4. JSC may only use the Nielsen Information internally and may only use the Nielsen Information and work product thereof in connection with the Proceeding.

5. JSC may disclose the Nielsen Information, and the work product thereof, but only as necessary to the use thereof permitted herein and only to (a) counsel to JSC, and to such independent consultant(s) to JSC as JSC shall identify to Nielsen in writing at least seven (7) business days prior to any such disclosure and as to whom Nielsen has not objected within five (5) business days after such identification, who, in each case, acknowledges Nielsen's rights in the Nielsen Information and agrees to abide by the restrictions in this letter by signing a copy hereof, as indicated below; and (b) to the Copyright Royalty Tribunal ("Tribunal"), but only on the express condition that all parties to the Proceeding and the Tribunal agree that none of the Nielsen Information or work product will be subject to placement in, and none of the Nielsen Information or work product is included in, the public record of the Proceeding or otherwise subject to further disclosure or dissemination, all such Nielsen Information and work product to be filed under seal and accorded strict in camera treatment.

6. None of the Nielsen Information or work product thereof may be copied except as necessary in connection with the use thereof permitted herein.

7. All Nielsen Information and work product all copies thereof shall be returned to Nielsen promptly after the Proceeding has become final and no longer subject to appeal.

8. Nielsen does not by this letter, the provision to JSC of the Nielsen Information or otherwise, waive, affect or impair its rights either to refuse to provide any other information to JSC or others, or to provide any Nielsen Information or other information to any other person or entity.

Robert Alan Garrett, Esq.

July 2, 1993

If the foregoing is acceptable, please sign below, as indicated, on behalf of JSC and return the signed original to me. As I told you after the deposition, I will be unavailable during the next week. However, if you have any questions, I will be happy to discuss them with you upon my return to the office on July 12.

Sincerely,

~~Lawrence A. Laskey~~
~~Assistant General Counsel~~

LAL: cas

cc: Paul Lindstrom, A. C. Nielsen
Dennis Lane, Morrison & Hecker

Accepted and Agreed this 6th day of July, 1993

Robert Alan Garrett,
Counsel to Joint Sports Claimants

The undersigned, having been retained by Joint Sports Claimants for purposes of the "Proceeding", as defined above, has received and reviewed a true and complete copy of the July 2, 1993 letter of which this statement is a part and, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, acknowledges Nielsen's rights set forth above and agrees to abide by the obligations and restrictions as set forth in this letter.

(signature) _____

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(print name)_____
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(date) _____

TESTIMONY OF PAUL LINDSTROM
BEFORE THE COPYRIGHT ROYALTY TRIBUNAL

My name is Paul Lindstrom. I am a Vice-President and Product Manager of Nielsen Homevideo Index (NHI). NHI, a division of Nielsen Media Research, was established in 1980 in order to measure all non-traditional broadcast uses of television including cable, Pay-TV, VCR's, video games, DBS, teletext, videotext etc. I have worked for Nielsen Media Research for thirteen and a half years and I have been with NHI since its inception. I have spent the last twelve years designing custom research for the new technologies.

I have been asked to respond to questions raised about the validity and accuracy of the television viewing diary. I would first like to provide some general background on the use of the television diary and then deal with the specific points raised in Dr. Reid's testimony.

The Nielsen name is synonymous with television ratings. The ratings provide an estimate of the television audience size and are a barometer of viewing habits. Advertisers spend approximately 30 billion dollars a year on television advertising time with the expectation that their commercial messages are

reaching certain audiences. Nielsen's charter as an independent measurement service is to provide both the buyer and seller of time with unbiased estimates of viewing behavior.

The television viewing diary was first introduced in 1953 to enhance the Nielsen Television Index (NTI) Audimeter Service by reporting individual viewer demographics. A year later, in 1954, Nielsen established the Nielsen Station Index (NSI) to measure television in local markets. For local measurement purposes the diary was used for collecting both set tuning and viewer demographic information.

Today NSI provides hundreds of stations, advertisers and agencies with usable information about the size and nature of local audiences. NSI serves more than 200 individual markets. In 25 of the larger TV markets Nielsen uses an advanced generation of set-tuning meters to collect tuning information from sample households. Nearly 11,000 of these metered households are used in the NSI Sample, although these meters are not used in the MPAA special analysis as it is undesirable to mix methodologies (i.e. diaries and meters). Four times a year, commonly known as sweeps, diaries are received from approximately 100,000 households across all markets. These diaries not only form the basis for NSI's measurement but are used for Nielsen's Cable Audience Profile (CAP) Service. CAP is an ongoing service which

provides viewing data on cable network audiences on the individual cable system level. CAP currently reports on over 400 cable systems.

The television environment is not the same today as it was 40 years ago when Nielsen first began measuring television. Over the years Nielsen has continued to improve and refine measurement techniques. There is no such thing as a perfect research tool. All research is susceptible to both sampling and non-sampling bias. The diary is no exception. However, Nielsen has continually worked with our clients and taken all prudent steps to insure the highest quality measurement possible.

Dr. L.N. Reid raises three primary issues on pages 14 through 16 of his August 1991 testimony. These involve the questions of non-response bias, the possibility that diaries may be filled out on a recall basis and the potential problems caused by the proliferation of viewing alternatives. Each of these questions is valid and has been struggled with by both Nielsen and hundreds of our clients.

Admittedly it is preferable to have as close to a 100% response rate as possible. Nielsen continually works to raise the response rate among all our services. While it is true that not all groups respond at the same rate (again this is true for all

research) Nielsen weights the viewing information to reflect each groups true representation in the population. This weighting works to minimize the effect of non-response bias in the final results.

Dr. Reid also states that "The Nielsen-based MPAA study is the product of self-reported recall of past behavior" and that "...diary based audience data...reflect 'faulty recall' and should not be equated with absolute viewing behavior". We freely acknowledge the likelihood that some diary-based viewing data is being recorded on a recall basis. However, the effect of recall on the accuracy of viewing data depends on the amount of time between viewing and the recording of that viewing.

Dr. Reid's statements imply that all diary entries are based on recall. This is not the case: we find most respondents fill out the diary at the same time or within a brief period of their actual viewing. Furthermore, Dr. Reid does not differentiate between the effects of long and short term recall. Short recall periods may have little effect. The impact of recall tends to be greatest during those viewing segments of the shortest duration. A respondent is less likely to recall five minutes viewed of one program than sixty minutes viewed of another. As a consequence this type of response error occurs at points which contribute the least to overall television ratings. In other words, the overall

effect is minimal and generally acceptable by the industry.

Lastly, Dr. Reid raises the possibility that recall is a particular problem for cable subscribers. This is based on the increasing complexity of the television viewing environment. Nielsen has taken many steps to help alleviate respondent confusion. Among the innovations utilized in 1989 are the inclusion in each cable subscribers' diary of a roster listing all channels and channel numbers on the system and the use of CODE data base. Nielsen's CODE provides data on over 10,000 headends which allows our editors to correctly credit viewing entries. Also as stated before, respondent confusion, when it occurs, tends to happen during the shortest viewing durations, thus minimizing its impact on overall viewing information.

Dr. Reid has identified, but not quantified, potential problems of using diaries. While critical of the diary methodology he has not proposed alternate data collection methods that meet the data needs and financial constraints of the MPAA.

I have worked with the MPAA for the last ten years on the refinement of our special study in order to answer all questions raised by the Copyright Tribunal. There are only three widely accepted methods for measuring television usage. These are coincidentals, meters and diaries. Efforts have included

investigations into the feasibility of utilizing either of the other methods. A coincidental involves calling sample households on the telephone and asking what they were viewing when the phone rang. It was determined that coincidentals were too inefficient at the scale necessary to be a reasonable alternative. Meters have also been eliminated due to insufficient sample sizes to produce reliable data of the type required.

In conclusion, both response and non-response errors may have some effect on the NSI diary data, the diary method still provides the best industry wide practical measurement of most local market usage. This is witnessed by the diary's 35 year history as the primary local market measurement tool. The diary based data base provides, in our opinion, the best method for reporting data of the type required for the Copyright Tribunal.